LIBRARY
SUPREME COURT, U.S.

CORRECTED COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

WMCA, INC., ET AL., APPELLANTS,

vs.

CAROLINE K. SIMON, SECRETARY OF STATE OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED SEPTEMBER 26, 1963

PROBABLE JURISDICTION NOTED JUNE 10, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 20

WMCA, INC., ET AL., APPELLANTS,

vs.

CAROLINE K. SIMON, SECRETARY OF STATE OF THE STATE OF NEW YORK, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from the United States District Court for the Southern District of New York		
Complaint	1	1
Exhibits I–III (omitted in printing)	18	12
Exhibit IV—Report of The Joint Legislative Committee on Reapportionment, November 17, 1953, No. 98	31	13
I—Readjustment and reapportionment based upon federal decennial census mandatory	31b	14
II—Readjustment of Senate Districts	31e	17
III—Reapportionment of Members of Assembly	31i	22
Exhibit B—Certificate of Director, Bureau of the Census to a statement of the census tabulation, etc.	31k	24

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 10, 1963

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Complaint—Continued		
Exhibit IV—Report of The Joint Legislative Committee on Reapportionment, November 17, 1953, No. 98—Continued		
Exhibit C—Summary statement of the census tabulation showing total population and citizen population of each of the counties of the State of New York	31l	25
Exhibit D—Schedule showing 1953 Senate Districts, 1953 Reapportionment based on 1950 Federal Census	31m	27
Exhibit E—Schedule showing Citizen population of each county of the State of New York and the number of assemblymen allotted to it	31o	30
Exhibit V—United States Census of Population, 1960, New York	32	32
Number of Inhabitants	32	32
List of tables and list of maps	32e	47
Answer of defendants Abe Stark and Denis J. Mahon, James Power, John R. Crews and Thomas Mallee, President of City Council and Commissioners of the Board of Elections of the City of New York	41	87
Opinion of the three-judge district court dismissing the complaint, dated January 11, 1962, Levet, District Judge	261	88
Concurring opinion, Ryan, District Judge	292	111
Concurring opinion, Waterman, Circuit Judge	294	112
Judgment dismissing the complaint, dated January 11, 1962	296	113
Order on remand from the Supreme Court of the United States, dated July 10, 1962	314	114
Answer of defendant, Eugene H. Nickerson, Chairman of the Board of Supervisors of Nassau County, etc.	316	116
Answer of defendant, Leonard Berman, Chairman of the Board of Supervisors of Westchester County	320	117

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Answer of defendants, Caroline K. Simon and Louis J. Lefkowitz	322	119
Answer of defendant, Arthur M. Cromarty, Chairman of the Board of Supervisors of Suffolk County	328	123
Transcript of hearing of August 1, 1962	332	125
Appearances	333	125
Statement by Mr. Sand on the position of the plaintiffs	340	129
Statement by Mr. Galt on the position of the defendants	342	130
Offer of proof by Mr. Offner on behalf of The City of New York	345	132
Statement by Mr. Libenson on the position of Westchester County	347	133
Offer of proof by Mr. Sand on behalf of plaintiffs	348	133
Objection to offer of proof by Mr. Galt on behalf of defendants	350	135
Colloquy between court and counsel	354	136
Three offers of proof by Mr. Sand and Court's ruling to exclude them	365	143
Offer of proof by Mr. Offner and Court's ruling to exclude	372	147
Offer of affidavits of Ruth C. Silva (Exhibit 9) and R. Peter Straus (Exhibit 8) for identification	376	149
Offers in evidence and colloquy thereon	382	152
Testimony of Ruth C. Silva—		
direct	386	154
cross	398	161
Stipulation that certain data is accurate and is properly before the Court ordered filed	404	164
Testimony of Ruth C. Silva—		
cross	404	164
Plaintiffs rest	432	180
Defendants rest	432	180
Colloquy between court and Mr. Galt	435	181
Argument on motion to dismiss the entire complaint by Mr. Sand	439	183

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Transcript of hearing of August 1, 1962—Continued		
Briefed questions concerning remedy by Mr. Sand	471	200
Argument on motion to dismiss the entire complaint by Mr. Offner on behalf of the City of New York	477	203
Argument on motion to dismiss the entire complaint by Mr. Nickerson on behalf of Nassau County	477	203
Argument on motion to dismiss the entire complaint by Mr. Galt on behalf of defendant	480	205
Argument on motion to dismiss the entire complaint by Mr. Libenson on behalf of Westchester County	515	222
Argument on motion to dismiss the entire complaint by Mr. Corwin on behalf of Suffolk County	515	223
Rebuttal argument by Mr. Sand	516	223
Submission of case and reserving of ruling on motions to dismiss	518	225
Reporter's certificate (omitted in printing)	519	225
Stipulation that certain data is accurate and is properly before the court	520	226
Table I—Showing New York State Citizen Population by County and by Legislative District	521	227
Table II—Showing the Votes Cast for State Senator by County	524	230
Table III—Showing Apportionments of Senate Districts Under 1894 Constitution	527	233
Table IV—Showing the following apportionment would result if the New York State Legislature reapportioned the Senate under the present constitutional formula, on the basis of 1960 Census statistics and on basis of second ratio	528	234
Table V—Showing number of counties having assembly ratios equal to	529	235

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Stipulation that certain data is accurate and is properly before the court—Continued		
Table VI—Showing average 1950 Census Population In Each Assembly District	530	236
Table VII—Showing the following apportionment would result if the New York State Legislature reapportioned Senate and Assembly Districts under the present constitutional formula, on the basis of 1960 Census statistics	531	237
Table VIII—Showing the following apportionment would result if the New York State Legislature reapportioned the Assembly under the present constitutional formula, on the basis of the 1960 census statistics	532	238
Tables IX and X and XI—see notes	535	241
Plaintiff's Exhibits:	537	243
Exhibit 1—Table I—Showing Senate-Seat Remainders in All Counties Having Three or More Full Ratios	537	243
Exhibit 2—Table II—Showing Senate Ratios and Averages	538	244
Exhibit 3—Table III—Showing Senate Districts Under Constitution of 1894—Citizen Population Per Seat	539	245
Exhibit 4—Table IV—Showing percentage of citizen population and Senators in counties having	540	246
Exhibit 5—Percentage graph showing All Counties Having Three or More Full Senate Ratios	541	247
Exhibit 6—Table VIII—Showing average citizen population per Assemblyman in counties of	542	248
Exhibit 7—Table X—Showing percent of citizen inhabitants and of assembly seats in counties of the	543	249

	Original	Print
Record from the United States District Court for the Southern District of New York—Continued		
Plaintiff's Exhibit 8—Affidavit of R. Peter Straus for identification	544	250
Extracts from Plaintiff's Exhibit 9—Appendix to Affidavit of Ruth C. Silva	573	269
See separate index page	573	269
Opinion of the three judge district court, dated August 16, 1962, Levet, District Judge	611	294
Appendix A—Table IV—Showing the following apportionment would result if the New York State Legislature reapportioned the Senate under the present constitutional formula, on the basis of 1960 Census statistics and On basis of second ratio (copy) (omitted in printing)	642	315
Appendix B—Table VIII—Showing the following apportionment would result if the New York State Legislature reapportioned the Assembly under the present constitutional formula, on the basis of the 1960 census statistics (copy) (omitted in printing)	643	315
Appendix C—Map showing Number of Members of Assembly Apportioned to each county in State Pursuant to Chapter 893, Laws of 1953, 2nd Sess.	644	317
Appendix D—Map showing 58 Senatorial Districts of New York State, etc.	645	318
Appendix E—Table showing County Recapitulation, Population of the State of New York for years 1915-1960	646	319
Concurring opinion, Ryan, District Judge	647	320
Concurring opinion, Waterman, Circuit Judge	651	323
Judgment	652	324
Notice of appeal to the Supreme Court of the United States (excerpts)	653	325
Order noting probable jurisdiction	660	328

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civil No. 1559

W.M.C.A., Inc.; R. Peter Straus; Joseph De Maio; Edward Lind; S. Thomas Delaney; Edward C. Brown; James J. McCafferty, Plaintiffs,

vs.

Caroline K. Simon, Secretary of State of the State of New York, Louis J. Lefkowitz, Attorney General of the State of New York, Abe Stark, President of the City Council of the City of New York, A. Holly Patterson, Chairman, Board of Supervisors, Nassau County, Owen M. Quinn, Chairman, Board of Supervisors, Westchester County, William J. Leonard, Chairman, Board of Supervisors, Suffolk County, Denis J. Mahon, James Powers, John R. Crews, Thomas Mallee, Commissioners, Board of Elections, City of New York, Defendants.

Complaint—Filed May 1, 1961

[fol. 2] Plaintiffs state that:

For a First Cause of Action

1. This Court has original jurisdiction of this action and the plaintiffs have the right to bring this suit under the Civil Rights Act, U.S.C. Title 42, Secs. 1983 and 1988. This Court additionally has jurisdiction under U.S.C. Title 28, Sec. 1343(3). Relief hereunder is also sought pursuant to the Federal Declaratory Judgment Act, U.S.C. Title 28, Secs. 2201, 2202. All of the foregoing statutes are set forth in pertinent part in Exhibit I annexed hereto and made a part hereof.

2. Under U.S.C. Title 28, Secs. 2281 et seq. provision is made for the convening of a three judge district court where the relief requested is an "interlocutory or perma-

nent injunction restraining the enforcement operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute." As appears more fully below, Plaintiffs seek such relief and request the convening of such court.

3. The Plaintiff, W.M.C.A., Inc., is a corporation duly organized and incorporated pursuant to the laws of the State of New York and having its principal place of business at 415 Madison Avenue, in the State of New York and County of New York. W.M.C.A., Inc. is a taxpayer of the State of New York residing in said County in which capacity it appears as Plaintiff herein.

[fol. 3] 4. The individual Plaintiffs are citizens and taxpayers of the United States and of the State of New York and, as qualified voters in said State are entitled to vote for the members of the Senate and Assembly of the State of New York.

(a) Plaintiff R. Peter Straus resides at 101 Central Park West in the State of New York and County of New York, and is a qualified voter, taxpayer and owner of real property in said County. He appears as Plaintiff herein in such individual capacity and as President of W.M.C.A., Inc.

(b) The following Plaintiffs, residing at the addresses below indicated, are taxpayers and qualified voters in the below indicated counties:

Plaintiff	Resides	County
Joseph De Maio	1530 Archer Road Bronx	Bronx
Edward Lind	3165 Nostrand Avenue Brooklyn	Kings
S. Thomas Delaney	86-06 35th Avenue Jackson Heights	Queens
Edward C. Brown	93 Samuel Street Lake Ronkonkoma	Suffolk
James J. McCafferty	190 Park Avenue Merrick	Nassau

The aforementioned Plaintiffs jointly and severally bring this action on their own behalf and on behalf of all other persons, citizens, taxpayers and voters in the State of New York similarly situated.

[fol. 4] 5. The Defendants are all citizens of the United States and of the State of New York and reside within the said State.

Defendant Caroline K. Simon is the duly elected, qualified and acting Secretary of the State of New York, with offices at 164 State Street, Albany, New York. As Secretary of State, she will be obliged to prepare and distribute election material to the county boards of election and perform other official functions in connection with the next ensuing statewide election.

Defendant Louis J. Lefkowitz is the duly elected, qualified and acting Attorney General of the State of New York, and is the chief legal officer of the State, with offices at State Office Building, Albany, New York.

Defendant Abe Stark is the duly elected, qualified and acting President of the City Council of the City of New York, with offices at City Hall, New York, N.Y. A. Holly Patterson, with offices at Old County Court House, Mineola, N.Y., Owen M. Quinn, with offices at 803 County Office Building, White Plains, N.Y. and William J. Leonard, with offices at Suffolk County Center, Riverhead, N.Y. are the duly elected, qualified and acting Chairmen of the Board of Supervisors of Nassau, Westchester and Suffolk Counties, respectively. Said President of the City Council and Chairmen of the Boards of Supervisors are sued also as representatives of the entire City Council and all the County Boards of Supervisors in the State of New York, such persons being so numerous as to make it impractical to bring them all before the Court. There is a common [fol. 5] question of law involved, that is the constitutionality of the State constitutional and statutory provisions relating to apportionment. Common relief is sought against all members of said Boards of Supervisors in their official capacities. It is the duty of the Board of Supervisors (and, in New York City of the City Council) in such counties as are entitled to more than one assemblyman, to divide the

county into as many assembly districts as are allotted to the County pursuant to an apportionment in accordance with certain Constitutional provisions set forth below.

Defendants Denis J. Mahon, James Powers, John R. Crews and Thomas Mallee are the duly appointed, qualified, and acting Commissioners of the Board of Elections of the City of New York, with offices at 80 Varick Street, New York, New York. Said Commissioners of Elections are sued also as representatives of all the Boards of Elections in the State of New York, such persons being so numerous as to make it impractical to bring them all before the Court. There is a common question of law involved, that is, the constitutionality of the State Constitutional and statutory provisions relating to apportionment. Common relief is sought against all members of said Boards of Elections in their official capacities. It is the duty of said Boards of Elections to supervise and conduct elections pursuant to the provisions of the election laws of the State of New York.

This action is brought against all of the aforenamed Defendants in their respective capacities.

[fol. 6] 6. The Plaintiffs are denied the right to due process and the equal protection of the laws as guaranteed by the XIV Amendment to the Constitution of the United States and they bring this action on their own behalf and on behalf of all taxpayers and all qualified voters of their respective Senate and Assembly districts, and further on behalf of all voters of the State of New York who are similarly situated for a declaration of their rights and a declaration of the invalidity of those sections of the Constitution of the State of New York, and the statutes implementing said sections which apportion the Senators and Assemblymen in the State of New York and for such declaratory and injunctive relief as may be proper to assure them and all other similarly situated due process and the equal protection of the laws which are now and have been for many years denied them by the Defendants and their predecessors in office who have complied with certain provisions of the Constitution of the State of New York, and statutes implementing said

provisions, which are violative of the Constitution of the United States, all of which being particularly set forth herein.

7. The XIV Amendment to the Constitution of the United States, Section 1, provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or [fol. 7] immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. The Constitution of the State of New York provides, for a periodic reapportionment of the State into Senate and Assembly districts in accordance with the formula contained in Article III, §§ 2-5 thereof, which sections are set forth in full in Exhibit II, annexed hereto and made a part hereof. Said Constitutional provisions are binding upon all of the Defendants herein in connection with the performance by them of their official duties relating to apportionment and election procedures in the State of New York.

9. Pursuant to the formula for apportionment contained in the aforesaid provisions of the State Constitution, the legislature from time to time following the Federal census taken decennially, and most recently in 1953 (L. 1953, C 893) has reapportioned the Senate and Assembly Districts. The present apportionment is contained in State Law §§ 120-123, set forth in full in Exhibit III annexed hereto and made a part hereof.

10. On information and belief, a Joint Legislative Committee of Reapportionment headed by Senator Robert C. McEwen and acting pursuant to a Joint Resolution of the Senate and Assembly is presently engaged, at considerable cost and expense to the taxpayers of the State of New [fol. 8] York, in preparing a reapportionment of the Senate and Assembly Districts of the State based upon the con-

stitutional provisions and the preliminary 1960 census figures.

11. Defendants have in the past complied, and it must be presumed they will continue to comply, with the State constitutional provisions until such time as such provisions shall be declared by competent authority to be invalid.

12. The provisions of the New York State Constitution Article III, §§ 2-5, violate the XIV Amendment of the Constitution of the United States because the apportionment formula contained therein results, and must necessarily result, when applied to the population figures of the State in a grossly unfair weighting of both houses in the State legislature in favor of the lesser populated rural areas of the state to the great disadvantage of the densely populated urban centers of the state.

13. In particular and among other things, insofar as the Senate apportionment is concerned that "mandatory" provision of the State Constitution which requires that the total of fifty Senators established by the 1894 Constitution shall be increased by those Senators to which any of the larger counties become entitled in addition to their allotment as of 1894, but without effect for decreases in other large counties, and that "mandatory" provision which prohibits any county from having four or more Senators unless it has a full ratio for each Senator, operate to cause the underrepresentation of the urban areas. Insofar [fol. 9] as the Assembly is concerned that "mandatory" provision which requires that every county except Hamilton shall always be entitled to one member coupled with the limitation of the entire membership to 150 necessarily results in underrepresentation in the Assembly of the large urban centers.

14. As a result of the 1953 apportionment, 58 Senatorial Districts and 150 Assembly Districts were created. With respect to the counties in which Plaintiffs reside, the following figures reflect the citizen population and the representation accorded said counties:

County	Citizen Population	Senators	Assemblymen
New York	1,795,726	6	16
Bronx	1,378,181	4	12
Kings	2,595,187	9	22
Queens	1,484,214	5	13
Suffolk	261,003	1	3
Nassau	655,690	3	6

In contrast to the foregoing, the following upstate counties were represented as follows:

County	Citizen Population	Senators	Assemblymen
43rd Senate District			
Jefferson	83,539	—	1
Lewis	22,187	—	1
Oswego	75,935	—	1
Total	181,661	1	3
Westchester	601,682	3	6

[fol. 10]

County	Citizen Population	Senators	Assemblymen
50th Senate District			
Ontario	59,269	—	1
Schuyler	14,066	—	1
Seneca	28,254	—	1
Wayne	56,662	—	1
Yates	17,461	—	1
Total	175,712	1	5

All of the foregoing figures are taken from the Report of the Joint Legislative Committee on Reapportionment, November 17, 1953 (which report is annexed hereto as Exhibit IV and made a part hereof).

It is apparent from the foregoing that whereas one Senator represents approximately 299,000 citizens in New York County (See Exhibit D to Exhibit IV hereof), one Senator represents substantially fewer citizens, in some

instances almost as few as half as many citizens in upstate counties. Moreover, whatever justification may exist for unequal representation in one house of a bicameral legislature, it is apparent that the gross distortion exists with respect to both houses of the New York legislature. For example, one Assemblyman represents 17,461 citizens of Yates County; one Assemblyman represents approximately 115,000 citizens in Bronx County.

The foregoing are merely illustrative of the malapportionment which exists generally between the urban and rural counties in both the Senate and Assembly.

15. The figures contained in the United States Bureau of Census report, *U.S. Census of Population 1960,* Number of Inhabitants, New York Final Report (P.C. (1) 34A). (Exhibit V annexed hereto and made a part hereof) indi- [fol. 11] cate that a reapportionment pursuant to the discriminatory constitutional formula and based on the 1960 census figures would only continue or even aggravate the existing malapportionment.

16. As a result of the constitutional provisions challenged herein, the Plaintiffs' votes are not as effective in either house of the legislature as the votes of other citizens residing in rural areas of the state. Plaintiffs and all others similarly situated suffer a debasement of their votes by virtue of the arbitrary, obsolete and unconstitutional apportionment of the legislature and they and all others similarly situated are denied the equal protection of the laws required by the Constitution of the United States.

17. By a purposeful and systematic plan embodied in the Constitution of the State and implemented by statute to discriminate against certain geographic areas and classes of persons and to deny them the equal protection of the laws, Plaintiffs and others similarly situated are denied rights guaranteed to them by the Federal Constitution. When all the inequalities and disparities resulting from the constitutional formula are taken together, it is apparent that the Plaintiffs and others similarly situated in the State of New York are governed by a legislature neither house of which is a body representative of the people. The mal-

apportionment which the State Constitution perpetuates is contrary to the prevailing philosophy of government in the [fol. 12] United States and all Anglo-Saxon jurisdictions in which the legislature has the power to make laws only because it has the power and duty to represent the people.

18. The State Legislature, the apportionment of which is controlled by the provisions challenged herein, has, as a result of such apportionment, consciously and purposefully discriminated against the Plaintiffs and others similarly situated in such manner as to deprive such persons of due process and the equal protection of the laws.

As a result of the aforesaid malapportionment the legislature of New York for a number of years has denied to Plaintiffs and to others similarly situated the equal protection of the laws by unjustly discriminating against large segments of the population of the state in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the state through the exercise of the taxing powers. Plaintiff W.M.C.A., Inc. and the individual plaintiffs have been subjected to taxation without adequate representation in violation of the XIV Amendment.

19. The Defendants or their successors in office unless prevented by this Court must perform their duties as they and their predecessors in office have performed those duties since the enactment of the challenged constitutional provisions in 1894 and the rights of these Plaintiffs and all other qualified voters of the State of New York can be protected [fol. 13] only by decree of this Court declaring Article III, §§ 2-5 of the New York State Constitution and State Law §§ 121 and 123 to be unconstitutional and by enjoining the Defendants from performing any acts or duties in compliance with these unconstitutional provisions.

20. The Plaintiffs have no adequate remedy other than the judicial relief sought herein. Until such time as Article III, §§ 2-5 of the New York State Constitution shall have been declared invalid, Defendants will be bound thereby and are not free to exercise any discretion to alleviate the deprivations suffered by Plaintiffs. Only judicial relief can remedy this condition because:

A. Since the discriminatory provisions are embodied in the Constitution itself, only a constitutional amendment or judicial decree can remedy the situation: Under Article XIX, § 1 of the State Constitution, any amendment to the Constitution must be agreed to by a majority of the members elected to each of the two houses, whereupon it is referred to the next regular legislative session convening after the succeeding general election of members of the assembly. If the amendment receives majority approval, it is next referred to the people for approval in such manner and at such times as the legislature shall prescribe. If the people approve of the amendment by a majority vote it becomes a part of the Constitution on the first day of January next after such approval. Therefore, it would be [fol. 14] impossible, even were the legislature disposed to act immediately, to amend the provisions challenged herein prior to the next statewide election in 1962 or for sometime thereafter and the violation of Plaintiffs' rights would continue during such time. The only other means of amending the Constitution, by convention pursuant to Article XIX, § 2, will be unavailable until 1978. Upon declaration by this Court that Article III, §§ 2-5 of the Constitution is invalid, the legislature could promptly and well prior to the 1962 elections formulate some fair apportionment for the State and enact legislation to accomplish this result until such time as a new constitutional provision were adopted for the State.

B. The legislature is controlled and dominated by persons elected by a minority of citizens who may be expected to preserve the status quo which perpetuates their domination.

For a Second Cause of Action

21. Plaintiffs repeat each and every allegation contained in Paragraphs 1-20 hereof with the same force and effect as if set forth in full herein.

22. Sections 2-5 of Article III of the New York State Constitution were invalid and violative of the XIV Amendment of the United States Constitution at the time of their adoption in 1894. Adoption of these provisions and the

[fol. 15] 1953 apportionment thereunder constituted affirmative legislative action which deprived Plaintiffs of rights guaranteed by the XIV Amendment. The population growth in the State of New York and the shifts of population to urban areas have aggravated the violation of the Plaintiffs' rights under the XIV Amendment. The failure to revise the constitutional formula to accommodate these population changes has increased the gross disparities between population density and representation in the State legislature.

Wherefore, in the light of the aforesaid, the Plaintiffs respectfully plead that:

I. This Court take jurisdiction of this matter; that a special three judge court be called to hear and determine this case as by law provided in 28 U.S.C., Sec. 2281 et seq.; and declare the rights of the Plaintiffs pursuant to 28 U.S.C. Sec. 2201 in the premises to wit:

(a) that the present legislative apportionment contained in State Law §§ 121 and 123 has deprived and continues to deprive the Plaintiffs of liberty and property without due process of law and deprives Plaintiffs of the equal protection of the laws in violation of the XIV Amendment of the Constitution of the United States.

(b) that Article III, §§ 2-5 of the Constitution of the State of New York are similarly void and invalid as being contrary to the XIV Amendment of the Constitution of the United States.

[fol. 16] II. Plaintiffs further pray that after hearing this action, the Court grant further relief in accord with 28 U.S.C., Section 2202 as follows:

(a) To restrain the Defendant Caroline K. Simon from printing, mailing or otherwise distributing or causing to be printed, mailed or otherwise distributed any election materials prepared pursuant to Article III, §§ 2-5 of the State Constitution or applying the provisions thereof, or of any other statute in implementation thereof, including State Laws, Sections 121 and 123, in such manner as to deprive Plaintiffs of due process and equal protection of

the laws as guaranteed by the Constitution of the United States.

(b) To restrain the Defendant Louis J. Lefkowitz from enforcing the aforesaid constitutional and statutory provisions.

(c) To restrain the Defendants Abe Stark, A. Holly Patterson, Owen M. Quinn and William J. Leonard and all other members of the County Boards of Supervisors of the State of New York from preparing any apportionment of the State into the Assembly Districts upon the basis of allocations made pursuant to Article III, §5 of the State Constitution.

(d) To restrain the Defendants Denis J. Mahon, James Powers, John R. Crews and Thomas Mallee and all members of the County Boards of Elections of the State of New York from supervising or conducting elections held pursuant to Article III, §§ 2-5 of the State Constitution and State Laws, §§ 121-123.

[fol. 17] III. Plaintiffs further pray that this Court:

(a) Should retain jurisdiction of this cause until such time as the legislature of the State, freed from the fetters imposed by the Constitutional provisions invalidated by this Court, provides for such apportionment of the State legislature as will insure to the urban voters of New York State the rights guaranteed them by the Constitution of the United States.

(b) Should grant such other and further relief as to this Court may seem just and proper.

Leonard B. Sand, Esq., Robinson, Silverman, Pearce & Aronsohn, Esqs., Office and P.O. Address: 230 Park Avenue, New York 17, New York;

Max Gross, Esq., Office and P.O. Address: Concourse Plaza Hotel, New York 51, New York, Attorneys for Plaintiffs.

May 1961

[fol. 18]

Exhibits I–III to Complaint

(omitted in printing)

[fol. 31]

EXHIBIT IV TO COMPLAINT

Legislative Document (1953) No. 98

STATE OF NEW YORK

REPORT

OF THE

JOINT LEGISLATIVE COMMITTEE

ON

REAPPORTIONMENT

November 17, 1953

(Emblem)

ALBANY
WILLIAMS PRESS, INC.
1953

[fol. 31a]

To the Legislature of the State of New York:

There is submitted herewith a bill for the readjustment of Senate districts and the reapportionment of members of the Assembly. This bill is hereunto annexed and marked Exhibit "A."

By joint resolution of the Senate and Assembly, adopted on March 29, 1949, your committee was created to organize and make a thorough preliminary investigation and study in connection with the subject of the next ensuing reapportionment of members of Assembly and readjustment or

alteration of Senate and Assembly districts, and of congressional districts of the State to the end that such necessary and appropriate preliminary work might be commenced and its results might be available for use at the time when such reapportionment, readjustment or alteration is required to be undertaken.

Subsequently by joint resolutions the time of your committee to make its report was extended to March 31, 1954. Your committee was reappointed June 19, 1953.

Upon the adoption of said joint resolution creating your committee, it proceeded to organize and to discharge the duties imposed upon it by said joint resolution.

During an extraordinary session of the Legislature held in December, 1951, your committee prepared and submitted to your Honorable Bodies a bill dealing with congressional redistricting, which said bill was enacted into law.

[fol. 31b]

I

READJUSTMENT AND REAPPORTIONMENT BASED UPON FEDERAL DECENNIAL CENSUS MANDATORY

The Constitution requires that after each Federal decennial census, the Legislature shall readjust and alter the Senate districts and reapportion the members of the Assembly and by the same law. These constitutional provisions are found in Sections 4 and 5 of Article III of the Constitution which respectively read in part as follows:

> "At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the Senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however,

that if such districts shall have been readjusted or altered, by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty.

"The members of the assembly shall be chosen by single districts and shall be apportioned by the legislature at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens."

The Constitution further provides that the readjustment and alteration of Senate districts and reapportionment of Assembly districts shall be based upon the decennial Federal census. This constitutional requirement is found in Section 4 of Article III of the Constitution and reads as follows:

"Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor."

[fol. 31c] In 1949 prior to the taking of the 1950 Federal decennial census, the then chairman of your committee, Hon. Harry A. Reoux, and members of the committee's legal staff conferred with officials of the Census Bureau at Washington regarding the method of taking a census of the citizen population of the State and also with regard to the taking of a census of the whole number of inhabitants and of the citizen population of certain city and town blocks and certain towns.

They were advised that since the Federal Law contained no requirement that the citizen population be separately shown it was the plan of the bureau to determine the citizen population of the State and of its subdivisions by means of a 20 per cent sample. Because of the importance of legislative readjustment and reapportionment your committee determined that an actual census of the citizen population of the State and of its subdivisions should be obtained. Accordingly, a contract was entered into with the Bureau of the Census for such census enumeration. The cost to the State of obtaining this complete census of citizen population was $200,000. A further contract was entered into with the Bureau for a census of the whole number of inhabitants and citizen population of certain city and town blocks and of certain towns.

That data was duly received. Upon its receipt, large scale master maps were prepared by your committee staff for each of the cities and counties which were required to be subdivided in the formation of Senate or Assembly districts. Upon these maps were entered census tracts and enumeration districts and also blocks and health districts. In each block tract and enumeration district there was then entered the total population and citizen population.

Annexed hereto and marked Exhibits "B" and "C" respectively is a copy of the certificate of the Director of the Census duly attested as required by Section 401 of the Civil Practice Act. A summary statement of the census tabulation showing the total population and citizen population of each of the counties of the State is also given.

According to the figures furnished by the Bureau of the Census, the citizen population of the State increased by 1,802,120 or approximately 14.5% from 1940 to 1950. The rate of increase among the counties of the State was not uniform. Three counties, Clinton, Hamilton and Lewis, actually lost in citizen population. Six counties, Essex, Franklin, Greene, Jefferson, Montgomery and Washington, gained less than 5% each. Fourteen counties showed a gain of 14.5%, the statewide average or better. The remaining thirty-nine counties of the State showed gains ranging from 5% to just under the average of 14.5%.

The counties, which showed gains of 14.5% or better, were for the most part either suburban counties or counties having medium sized cities. They were: Nassau, 71%; Suffolk, 42.7%; Tompkins, 40.4%; Niagara, 23.9%; Queens, 23.2%; Putnam, 22.9%; Rockland, 21.9%; Schenectady, 19.1%; Chemung, 18.6%; Onondaga, 18.2%; Madison, 17.3%; Saratoga, 15.6%; Erie, 14.7%; and Dutchess, 14.5%.

[fol. 31d] This shift in the population of the State has necessitated substantial changes in the existing Senate districts in order to comply with the constitutional requirement that the districts be as nearly equal in citizen population as may be. Saratoga had to be separated from Rensselaer; and Montgomery from Schenectady. Clinton had to be joined to St. Lawrence and Franklin; and Lewis to Jefferson and Oswego. Various changes had to be made in creating Senate districts among the counties in the southern tier and in the central part of the State. Niagara County had gained a population entitling it, alone, to a Senate district. This was done. And this necessitated the joinder of Orleans to Allegany, Genesee, Livingston and Wyoming.

This shift in population also necessitated changes in apportioning members of the Assembly among the counties of the State having a citizen population of more than two ratios. Albany and Bronx each lost one Assemblyman, and Kings lost two. Queens and Suffolk each gained an Assemblyman, and Nassau gained two.

[fol. 31e]

II

READJUSTMENT OF SENATE DISTRICTS

The readjustment of Senate districts involves two problems. The first problem is to determine the total number of Senate districts. The second is the creation of such Senate districts.

a. The Number of Senate Districts

Article III, Section 2 of the constitution, provides as follows:

> "The senate shall consist of fifty members, except as hereinafter provided."

The exception referred to is found in Section 4 of Article III of the Constitution and reads as follows:

> "The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent."

These provisions of the Constitution have been interpreted by the Court of Appeals in *Matter of Dowling*, 219 N. Y. 44 and in *Matter of Fay*, 291 N. Y. 198. In accordance with the rules laid down by the Court of Appeals in these cases, the following is the method which must be used to determine the whole number of senators.

The citizen population of the State is divided by fifty to obtain the ratio for apportioning senators. Each county having three or more full ratios is allotted a senator for each full ratio. The number of senators so allotted to each such county is then compared with the number given it in the Constitution of 1894 and any increase resulting from such comparison is added to fifty to give the whole number of senators. Where a county has been divided since the adoption of the 1894 Constitution the number of senators allotted on the ratio to the counties comprising substantially the same territory as was contained in such original county is compared with the number of senators given such county in the Constitution of 1894 and any resulting increase is added to the whole number of senators.

As was pointed out by the Court of Appeals in the *Matter of Dowling* supra, this interpretation of the constitutional provisions regulating the number of senators is in accord with the intent of the people as expressed in the convention which adopted the 1894 Constitution. That intent was to provide for increased representation to the more populous counties without taking representation from the smaller counties in the State.

[fol. 31f] According to the 1950 census the citizen population of the State is 14,203,449. Dividing that by 50 gives a ratio of 284,069. Upon the basis of that ratio Kings County has a citizen population entitling it to 9 senators; New York, a citizen population entitling it to 6 senators; Bronx, a citizen population entitling it to 4 senators; Erie, a citizen population entitling it to 3 senators; Queens, a citizen population entitling it to 5 senators, and Nassau, which was a part of Queens County at the time of the adoption of the 1894 Constitution, a citizen population entitling it to two senators. Comparing the number of senators to which each of these counties is entitled on the ratio on the present apportionment with the number allotted it by the Constitution of 1894, we find that Kings County has an increase of 2 and Queens and Nassau Counties which constitute substantially the same territory as Queens County in 1894, an increase of 6, a total increase of 8, which gives a Senate of 58.

The following is a table showing the comparison between the number of senators allotted to counties entitled to three or more senators on this apportionment and the number allotted to such counties under the 1894 Constitution.

COUNTY	No. under 1894	No. under this apportionment	Increase
Kings	7	9	2
New York	12	6	
Bronx		4	
Queens	1	5	6
Nassau		2	
Erie	3	3	
Total increase			8

NOTE: Present Bronx and New York Counties comprise substantially the same territory as New York County in 1894. Present Queens and Nassau Counties comprise substantially the same territory as Queens County in 1894.

b. Readjustment of Senate Districts

In connection with the readjustment of Senate districts the Constitution lays down for the guidance of the Legislature certain rules which are found in Article III, Section 4 of the Constitution. Of these rules the following are man-

datory and permit no exercise of discretion on the part of the Legislature.

1. Each district shall at all times consist of contiguous territory.
2. No county shall be divided in the formation of a Senate district, except to make two or more Senate districts wholly within such county.
3. No town, except a town having more than a full ratio of apportionment and no block in a city enclosed by streets or public ways shall be divided in the formation of a Senate district.

[fol. 31g] 4. No district shall contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district.

5. No county shall have four or more senators unless it shall have a full ratio for each senator.
6. No county shall have more than one-third of all the senators.
7. No two counties or the territory thereof as now organized which are adjoining counties or which are separated only by public waters, shall have more than one-half of all the senators.

The following rules are directory and involve the exercise of some discretion on the part of the Legislature.

1. Each Senate district shall contain as nearly as may be, an equal number of inhabitants, excluding aliens.
2. Each Senate district shall be in as compact form as practicable.
3. Counties, towns or blocks which form their location may be included in either of two districts, shall be so placed as to make said districts more nearly equal in number of inhabitants, excluding aliens.

Where a conflict arises between rules that are mandatory and those that involve discretion, the rules involving discretion must, of course, yield to the mandatory requirements

of the Constitution. Where two rules involving discretion conflict, or where two rules that are mandatory conflict, the choice of the rule to be followed rests with the Legislature. *Matter of Sherrill* v. *O'Brien*, 188 N. Y. 185, at page 211. In erecting the districts in the counties of the City of New York, your committee was confronted with the problem of making a choice between equality of population and compactness. An instance of this is the 21st and 22nd Senatorial districts, both of which are in New York County. In order to preserve equality of population, it was necessary to erect these districts with slightly irregular lines. The committee is of the opinion that in the case of these districts, and of other districts in the City of New York, it is more important that equality of population be preserved than that the districts have exactly regular boundary lines. Again, the boundary line between the County of Bronx and the County of New York divides a city block enclosed by public streets. Here, your committee was faced with the problem either of dividing a city block in the creation of Senate districts, or of dividing a county. It determined to divide the city block to avoid the division of a county.

In the bill submitted herewith your committee has apportioned to each county having a citizen population equal to or in excess of three full ratios, one senator for each such ratio. This has resulted in the apportionment of 27 senators, 9 to Kings County, 6 to New York County, 5 to Queens County, 4 to Bronx County and 3 to Erie County. The total citizen population of these five counties is 8,131,810. Deducting 27, the number of senators apportioned to these five counties, from 58, the whole number of [fol. 31h] senators, and 8,131,810, the citizen population of these counties, from 14,203,449, the total citizen population of the State, leaves 31 senators to be apportioned among the remaining 57 counties having an aggregate citizen population of 6,071,639.

In apportioning these remaining thirty-one senators, it was, of course, necessary to observe the mandatory requirements of the Constitution and to give due consideration that the districts be as compact as practicable. Annexed hereto and marked Exhibit "D" is a schedule, showing the Senate districts and the citizen population by counties.

[fol. 31i] III

REAPPORTIONMENT OF MEMBERS OF ASSEMBLY

Section 2 of Article III of the Constitution provides that the Assembly shall always consist of 150 members. Section 5 of Article III of the Constitution provides that the members of the Assembly shall be apportioned among the several counties of the State at each regular session at which Senate districts are readjusted or altered and by the same law. This section prescribes the method of apportioning members of the Assembly as follows:

The ratio for apportioning members of the Assembly is obtained by dividing the citizen population of the State by 150. One member is apportioned to every county which has a citizen population of less than one and one-half times the ratio. Fulton with Hamilton is taken as one county. Two assemblymen are apportioned to every other county. The remaining members of Assembly are apportioned to the counties having a citizen population of more than two full ratios. Members apportioned on remainders are apportioned to the counties having the highest remainders in the order thereof respectively. No county is given more members of Assembly than a county having a larger citizen population.

The citizen population of the State is 14,203,449. Dividing that figure by 150 results in a ratio of 94,690. One and one-half times that ratio is 142,035 and twice that ratio is 189,380. To each of the 45 counties (including Fulton and Hamilton as one county), having a citizen population of less than one and one-half times the ratio, one assemblyman is apportioned. Two assemblymen are apportioned to each of the other 16 counties in the State. This leaves 73 members of Assembly to be apportioned to the counties each of which has a citizen population of more than twice the ratio.

The Constitution does not prescribe the precise formula to be used in apportioning these additional members of Assembly. Several formulae for this apportionment have been suggested. Only one, the Brown Formula, has ever been used. This formula was employed by the Constitution of 1894 and in each valid reapportionment made thereafter.

Its use was approved by the Court of Appeals in *Matter of Dowling* and *Matter of Fay*, supra. The committee has followed that formula.

The application of the Brown Formula is as follows:

From the citizen population of each county having a citizen population or more than two ratios, two ratios are deducted. The results are added and divided by seventy-three, the remaining number of assemblymen to be apportioned to those counties to give a second ratio. This second ratio is then divided into the citizen population of each such county less two ratios and a number of assemblymen equal to the resulting whole number is apportioned to each [fol. 31j] such county. Any assemblymen then remaining unapportioned are apportioned to the counties having the highest remainders and in the order thereof.

Annexed thereto and marked Exhibit "E" is a schedule showing the citizen population of each county and the number of assemblymen allotted to it.

IV

Your committee wishes to express its thanks to its Executive Clerk, Mr. C. Burr Reed, and to the other members of its staff for their assistance and co-operation.

On the resignation as Chairman of the Honorable Harry A. Reoux, Pliny W. Williamson was appointed Chairman of the Committee.

Dated, *November* 10, 1953.

(Signed) PLINY W. WILLIAMSON, *Chairman*
FRED W. PRELLER, *Vice-Chairman*
JOHN H. HUGHES
ALONZO L. WATERS
GEORGE F. DANNEBROCK

[fol. 31k]

EXHIBIT B

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

WASHINGTON 25

August 16, 1951

I HEREBY CERTIFY, That the total population and the citizen population (excluding aliens) of the State of New York, and of each county of that State and of the minor civil divisions therein, and of each block in each of the specified cities therein, according to the returns of the Seventeenth Census of the United States, taken as of April 1, 1950, are as stated in the tabulations furnished to the Joint Legislative Committee on Reapportionment of the State of New York on the dates indicated on the list attached.

(Signed) ROY V. PEEL, *Director,*
Bureau of the Census

DEPARTMENT OF COMMERCE

OFFICE OF THE SECRETARY

I HEREBY CERTIFY, That Roy V. Peel, who signed the foregoing certificate, is now, and was at the time of signing, Director of the Census, and that full faith and credit should be given his certification as such.

[SEAL]

Department of Commerce
United States of America

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Department of Commerce to be affixed, this sixteenth day of August, one thousand nine hundred and fifty-one.

For the Secretary of Commerce:

(Signed) L. A. SHEA, *Acting Chief Clerk*

ALBANY, NEW YORK, *December* 15, 1953

I HEREBY CERTIFY, That the citizen population (excluding aliens) figures for each city, village, town or block, as used in the apportionment of Senate or Assembly districts are the same as furnished the Joint Legislative Committee on Reapportionment by the Bureau of the Census, Washington, D. C.

PLINY W. WILLIAMSON, *Chairman,*
Joint Legislative Committee on
Reapportionment

[fol. 311]

EXHIBIT C

County	Total Population	Citizen Population
Bronx	1,451,277	1,378,181
Kings	2,738,175	2,595,187
New York	1,960,101	1,795,726
Queens	1,550,849	1,484,214
Richmond	191,555	185,032
Albany	239,386	234,068
Allegany	43,784	43,475
Broome	184,698	181,496
Cattaraugus	77,901	76,993
Cayuga	70,136	69,037
Chautauqua	135,189	133,159
Chemung	86,827	85,989
Chenango	39,138	38,741
Clinton	53,622	52,443
Columbia	43,182	42,111
Cortland	37,158	36,786
Delaware	44,420	43,863
Dutchess	136,781	131,969
Erie	899,238	878,502
Essex	35,086	34,542
Franklin	44,830	43,919
Fulton	51,021	50,135
Genesee	47,584	46,690
Greene	28,745	28,082
Hamilton	4,105	4,055

County	Total Population	Citizen Population
Herkimer	61,407	59,693
Jefferson	85,521	83,539
Lewis	22,521	22,187
Livingston	40,257	39,692
Madison	46,214	45,624
Monroe	487,632	475,037
Montgomery	59,594	57,610
Nassau	672,765	655,690
Niagara	189,992	184,161
Oneida	222,855	216,486
Onondaga	341,719	334,453
Ontario	60,172	59,269
Orange	152,255	148,429
Orleans	29,832	29,306
Oswego	77,181	75,935
Otsego	50,763	50,089
Putnam	20,307	19,668
Rensselaer	132,607	129,995
Rockland	89,276	86,123
St. Lawrence	98,897	96,517
Saratoga	74,869	73,447
Schenectady	142,497	139,304
Schoharie	22,703	22,218
Schuyler	14,182	14,066
Seneca	29,253	28,254
Steuben	91,439	90,761
Suffolk	276,129	261,003
Sullivan	40,731	39,359
Tioga	30,166	29,826
Tompkins	59,122	57,853
Ulster	92,621	90,350
Warren	39,205	38,677
Washington	47,144	46,353
Wayne	57,323	56,662
Westchester	625,816	601,682
Wyoming	32,822	32,275
Yates	17,615	17,461

[fol. 31m]

EXHIBIT D

1953 Senate Districts
1953 REAPPORTIONMENT
Based on 1950 Federal Census

Senate District	Citizen Population	District Formation		County Citizen Population
1	261,003	Suffolk		261,003
2	218,564	Nassau	(part)	
3	218,562	Nassau	(part)	
4	218,564	Nassau	(part)	655,690
5	296,843	Queens	(part)	
6	296,842	Queens	(part)	
7	296,813	Queens	(part)	
8	296,842	Queens	(part)	
9	296,841	Queens	(part)	1,484,214
10	288,355	Kings	(part)	
11	288,355	Kings	(part)	
12	288,358	Kings	(part)	
13	288,354	Kings	(part)	
14	288,355	Kings	(part)	
15	288,353	Kings	(part)	
16	288,352	Kings	(part)	
17	288,352	Kings	(part)	
18	288,353	Kings	(part)	2,595,187
19	185,032	Richmond		185,032
20	299,290	New York	(part)	
21	299,288	New York	(part)	
22	299,288	New York	(part)	
23	299,285	New York	(part)	
24	299,290	New York	(part)	
25	299,285	New York	(part)	1,795,726
26	344,547	Bronx	(part)	
27	344,545	Bronx	(part)	
28	344,542	Bronx	(part)	
29	344,547	Bronx	(part)	1,378,181
30	200,560	Westchester	(part)	
31	200,560	Westchester	(part)	

Senate District	Citizen Population	District Formation	County Citizen Population
32	200,562	Westchester (part)	601,682
33	234,552	Orange	148,429
		Rockland	86,123
34	201,654	Delaware	43,863
		Greene	28,082
		Sullivan	39,359
		Ulster	90,350
35	193,748	Columbia	42,111
		Dutchess	131,969
		Putnam	19,668
36	234,068	Albany	234,068
37	176,348	Rensselaer	129,995
		Washington	46,353
38	161,522	Schenectady	139,304
		Schoharie	22,218
39	146,666	Essex	34,542
		Saratoga	73,447
		Warren	38,677
40	192,879	Clinton	52,443
		Franklin	43,919
		St. Lawrence	96,517
41	171,493	Fulton	50,135
		Hamilton	4,055
		Herkimer	59,693
		Montgomery	57,610
[fol. 31n]			
42	216,486	Oneida	216,486
43	181,661	Jefferson	83,539
		Lewis	22,187
		Oswego	75,935
44	167,226	Onondaga (part)	
45	167,227	Onondaga (part)	334,453
46	171,240	Chenango	38,741
		Cortland	36,786
		Madison	45,624
		Otsego	50,089
47	181,496	Broome	181,496
48	156,716	Cayuga	69,037
		Tompkins	57,853
		Tioga	29,826

Senate District	Citizen Population	District Formation	County Citizen Population
49	176,750	Chemung	85,989
		Steuben	90,761
		Ontario	59,269
50	175,712	Schuyler	14,066
		Seneca	28,254
		Wayne	56,662
		Yates	17,461
51	237,518	Monroe (part)	
52	237,519	Monroe (part)	475,037
53	191,438	Allegany	43,475
		Genesee	46,690
		Livingston	39,692
		Orleans	29,306
		Wyoming	32,275
		Niagara	184,161
54	184,161	Erie (part)	
55	292,836	Erie (part)	
56	292,831	Erie (part)	878,502
57	292,835	Cattaraugus	76,993
58	210,152	Chautauqua	133,159

[fol. 31o]

EXHIBIT E

County	Citizen Population	No. of Assemblymen
Bronx	1,378,181	12
Kings	2,595,187	22
New York	1,795,726	16
Queens	1,484,214	13
Richmond	185,032	2
Albany	234,068	2
Allegany	43,475	1
Broome	181,496	2
Cattaraugus	76,993	1
Cayuga	69,037	1
Chautauqua	133,159	1
Chemung	85,989	1
Chenango	38,741	1
Clinton	52,443	1
Columbia	42,111	1
Cortland	36,786	1
Delaware	43,863	1
Dutchess	131,969	1
Erie	878,502	8
Essex	34,542	1
Franklin	43,919	1
Fulton	50,135	1 (with Hamilton)
Genesee	46,690	1
Greene	28,082	1
Hamilton	4,055	(with Fulton)
Herkimer	59,693	1
Jefferson	83,539	1
Lewis	22,187	1
Livingston	39,692	1
Madison	45,624	1
Monroe	475,037	4
Montgomery	57,610	1
Nassau	655,690	6
Niagara	184,161	2
Oneida	216,486	2
Onondaga	334,453	3

County	Citizen Population	No. of Assemblymen
Ontario	59,269	1
Orange	148,429	2
Orleans	29,306	1
Oswego	75,935	1
Otsego	50,089	1
Putnam	19,668	1
Renseelaer	129,995	1
Rockland	86,123	1
St. Lawrence	96,517	1
Saratoga	73,447	1
Schenectady	139,304	1
Schoharie	22,218	1
Schuyler	14,066	1
Seneca	28,254	1
Steuben	90,761	1
Suffolk	261,003	3
Sullivan	39,359	1
Tioga	29,826	1
Tompkins	57,853	1
Ulster	90,350	1
Warren	38,677	1
Washington	46,353	1
Wayne	56,662	1
Westchester	601,682	6
Wyoming	32,275	1
Yates	17,461	1

[fol. 32]

EXHIBIT V TO COMPLAINT

UNITED STATES CENSUS OF

POPULATION

1960

NEW YORK

[fol. 32a]

NUMBER OF INHABITANTS

INTRODUCTION

This report presents statistics on the number of inhabitants of the State and its counties or comparable areas. In addition, figures are presented for minor civil divisions (townships, New England towns, etc.), urban places, incorporated places (cities, boroughs, villages, etc.), urbanized areas, standard metropolitan statistical areas, and on the population of the State and its counties or comparable areas classified by urban-rural residence. These data were secured in the 1960 Census of Population, conducted as of April 1, 1960. Comparable statistics from earlier censuses are also presented.

The extent of presentation of separate statistics for individual States is related, in part, to the Constitutional requirement that census figures serve as the basis for Congressional apportionment. Some of the detailed presentation for States, and even more of that for counties, cities, and minor civil divisions is based on Census Bureau experience as to what information is most wanted, supplemented by recommendations of our advisory committees, research, educational, and business organizations, and individuals. Financial limitations are, of course, an underlying factor compelling conciseness and such allocation of space as will serve all needs as fully as possible.

Usual place of residence.—In accordance with census practice dating back to 1790, each person enumerated in

the 1960 Census was counted as an inhabitant of his usual place of residence or usual place of abode, which is generally construed to mean the place where he lives and sleeps most of the time. This place is not necessarily the same as his legal residence, voting residence, or domicile; however, in the vast majority of cases, the use of these different bases of classification would produce substantially the same statistics, although there may be appreciable differences for a few areas.

In the application of this rule, persons were not always counted as residents of the places in which they happened to be found by the census enumerators. Persons in the larger hotels, motels, and similar places where guests usually pay for quarters were enumerated on the night of March 31, and those whose usual place of residence was elsewhere were allocated to their homes. In addition, information on persons away from their usual place of residence was obtained from other members of their families, landladies, etc. If an entire family was expected to be away during the whole period of the enumeration, information on it was obtained from neighbors. A matching process was used to eliminate duplicate reports for a person who reported for himself while away from his usual residence and who was also reported at his usual residence by someone else.

Persons in the Armed Forces quartered on military installations were enumerated as residents of the States, counties, and minor civil divisions in which their installations were located. Members of their families were enumerated where they actually resided. As in 1950, college students were considered residents of the communities in which they were residing while attending college. The crews of vessels of the U.S. Navy and the American Merchant Marine in harbors of the United States were counted as part of the population of the ports in which their vessels were berthed on April 1, 1960. Inmates of institutions, who ordinarily live there for long periods of time, were counted as inhabitants of the place in which the institution was located; whereas patients in general hospitals, who ordinarily remain for short periods of time, were counted at, or allocated to, their homes. Persons without a usual

place of residence were counted where they were enumerated.

Americans who were overseas for an extended period (in the Armed Forces, working at civilian jobs, studying in foreign universities, etc.) are not included in the population of any of the States or the District of Columbia. On the other hand, persons temporarily abroad on vacations, business trips, and the like, were enumerated at their usual residences on the basis of information received from members of their families or from neighbors.

Urban-rural residence.—Data on the population of the State by urban-rural residence are shown for the State in table 1 and for the counties, or comparable areas, in table 6. According to the definition adopted for use in the 1960 Census, the urban population comprises all persons living in (*a*) places of 2,500 inhabitants or more incorporated as cities, boroughs, villages, and towns (except towns in New England, New York, and Wisconsin); (*b*) the densely settled urban fringe, whether incorporated or unincorporated, of urbanized areas (see section below); (*c*) towns in New England and townships in New Jersey and Pennsylvania which contain no incorporated municipalities as subdivisions and have either 25,000 inhabitants or more or a population of 2,500 to 25,000 and a density of 1,500 persons or more per square mile; (*d*) counties in States other than the New England States, New Jersey, and Pennsylvania that have no incorporated municipalities within their boundaries and have a density of 1,500 persons or more per square mile; and (*e*) unincorporated places of 2,500 inhabitants or more.

This definition of urban is substantially the same as that used in 1950; the major difference between 1950 and 1960 is the designation in 1960 of urban towns in New England and of urban townships in New Jersey and Pennsylvania. The effect on population classification arising from this change was actually less than the list of *those* places classified as urban under special rules would suggest, because, in 1950, most of the population living in such places was classified as urban by virtue of residence in an urbanized area or in an unincorporated urban place. (See sections below.) In censuses prior to 1950, the urban population

comprised all persons living in incorporated places of 2,500 inhabitants or more and areas (usually minor civil divisions) classified as urban under somewhat different special rules relating to population size and density. In all definitions, the population not classified as urban constitutes the rural population. In the tables presenting the population by urban-rural residence, the "current" urban definition refers to the population classified in accordance with the definitions used in 1950 and 1960. The term "previous" urban definition refers to the definition used prior to 1950.

The most important component of the urban territory in all definitions is the group of incorporated places having 2,500 inhabitants or more. A definition of urban territory restricted to such places, however, excludes a number of equally large and densely settled places merely because they are not incorporated places. Under the definition used previous to 1950, an effort was made to avoid some of [fol. 32b] the more obvious omissions by the inclusion of selected places which were classified as urban under special rules. Even with these rules, however, many large and closely built-up places were excluded from the urban territory.

To improve its measure of the urban population, the Bureau of the Census adopted, in 1950, the concept of the urbanized area and delineated, in advance of enumeration, boundaries for unincorporated places. All the population residing in urban-fringe areas and in unincorporated places of 2,500 or more is classified as urban according to the "current" definition. The urban towns, townships, and counties as defined for the 1960 Census are somewhat similar in concept to the minor civil divisions classified as urban under special rules in 1940 and 1930.

For the convenience of those interested in the historical trend of the urban and rural population, the 1950 and 1960 population figures are shown on the basis of both the "current" definition and the "previous" definition. Although the Bureau of the Census has employed other definitions of "urban" in prior years, the urban and rural population figures published here as according to the "previous" definition have been revised to present a substantially consistent series.

Counties.—The primary divisions of the States are, in general, termed counties, but in Louisiana these divisions are known as parishes. There are no counties in Alaska; in this State, data are shown for election districts, which are the nearest equivalents of counties. In some States (Maryland, Missouri, and Virginia), there are also a number of cities which are independent of any county organization and thus constitute primary divisions of their States.

Minor civil divisions.—To the primary political divisions into which counties or comparable areas are divided, the Bureau of the Census applies the general term "minor civil divisions." Statistics on the population of each county or comparable area by minor civil divisions appear in table 7. Incorporated places which are not themselves minor civil divisions and unincorporated places are shown indented under the minor civil divisions in which they are located. When an incorporated or unincorporated place lies in more than one minor civil division, the population of the several parts is shown in table 7 under the appropriate minor civil division, and each part is designated as "part." The total population of such places appears in table 8. Unincorporated places are designated by "U" and urban towns and townships by "UT." Changes effected between 1950 and 1960 in boundaries of the areas are shown in the notes at the end of table 7. Boundary changes occurring between 1940 and 1950 are given in table 6 of State reports of the 1950 Census of Population.

Places.—The term "place" as used in reports of the decennial censuses refers to a concentration of population, regardless of the existence of legally prescribed limits, powers, or functions. Most of the places listed are incorporated as cities, towns, villages, or boroughs, however. In addition, the larger unincorporated places outside the urbanized areas were delineated and those with a population of 1,000 or more are presented in the same manner as incorporated places of equal size. Each unincorporated place possesses a definite nucleus of residences and has its boundaries drawn so as to include, if feasible, all the surrounding closely settled area. Furthermore, unincorporated places are shown within urbanized areas if

they have 10,000 inhabitants or more and if there was an expression of local interest in their recognition. The towns in New England and townships in New Jersey and Pennsylvania recognized as urban are also counted as places.

Incorporated places.—Political units recognized as incorporated places in the reports of the decennial censuses are those which are incorporated as cities, boroughs, towns, and villages with the exception that towns are not recognized as incorporated places in the New England States, New York, and Wisconsin. The towns in these States are minor civil divisions similar to the townships found in other States and not necessarily thickly settled centers of population such as the cities, boroughs, towns, and villages in other States. Similarly, in New Jersey and Pennsylvania, where some townships possess powers and functions similar to those of incorporated places, the townships are not classified as "incorporated places." Thus some minor civil divisions which are "incorporated" in one legal sense of the word are not regarded by the Census Bureau as "incorporated places." Without this restriction all of the towns in the New England States, New York, and Wisconsin and the townships in New Jersey and Pennsylvania would have to be counted as incorporated places without any consideration of the nature of population settlement. A number of towns and townships in these States do qualify, however; as urban towns or townships and in others the densely settled portions are recognized as unincorporated places or as parts of an urban fringe.

Unincorporated places.—As in the 1950 Census, the Bureau has delineated boundaries for densely settled population centers without corporate limits. All such places of 1,000 inhabitants or more are shown in tables 7 and 8. Population data for 1950 are shown only for those unincorporated places which had the same name in both 1950 and 1960. Of course, the boundaries of many such places have changed as the communities have grown.

Urban places.—The count of urban places in 1960 includes all incorporated and unincorporated places of 2,500 inhabitants or more, and the towns, townships, and counties classified as urban. Under the "previous" urban def-

inition, places of 2,500 or more and the areas urban under special rules were urban places.

Annexations.—The population figure for an incorporated place at earlier censuses applies to the area of the place at the time of the given census. Hence, the indicated change in population over the decade reflects the effect of any annexations or detachments. In order to permit an analysis of the relative importance of population growth within the old boundaries and of population added in annexed territory, table 9 for incorporated places of 2,500 or more has been included in this report. There were a great many annexations to cities in the decade of the 1950's, and some of them involved large areas.

Urbanized areas.—The major objective of the Bureau of the Census in delineating urbanized areas was to provide a better separation of urban and rural population in the vicinity of the larger cities, but individual urbanized areas have proved to be useful statistical areas. They correspond to what are called "conurbations" in some other countries. An urbanized area contains at least one city of 50,000 inhabitants or more in 1960,[1] as well as the surrounding closely settled incorporated places and unincorporated areas that meet the criteria listed below. All persons residing in an urbanized area are included in the urban population.

It appeared desirable to delineate the urbanized areas in terms of the 1960 Census results rather than prior to the census as was done in 1950. For this purpose a peripheral zone around each 1950 urbanized area and around cities that were presumably approaching a population of 50,000 was recognized. Within the unincorporated parts of this zone small enumeration districts were planned,[2]

---

[1] There are a few urbanized areas where there are "twin central cities" that have a combined population of at least 50,000. See the section below on "Standard Metropolitan Statistical Areas" for further discussion of twin central cities, neither of which has a population of 50,000 or more.

[2] An enumeration district (ED) is a small area assigned to an enumerator which must be canvassed and reported separately. In most cases an ED contains approximately 250 housing units.

usually including no more than one square mile of land area and no more than 75 housing units.

Arrangements were made to include within the urbanized areas those enumeration districts meeting specified criteria of population density as well as adjacent incorporated places. Since the urbanized area outside of incorporated places was defined in terms of enumeration districts, the boundaries for the most part follow such features as roads, streets, railroads, streams, and other clearly defined lines which may be easily identified by census enumerators in the field and often do not conform to the boundaries of political units.

[Vol. 32c] In addition to its central city or cities, an urbanized area also contains the following types of contiguous areas, which together constitute its urban fringe:

1. Incorporated places with 2,500 inhabitants or more

2. Incorporated places with less than 2,500 inhabitants, provided each has a closely settled area of 100 dwelling units or more

3. Towns in the New England States, townships in New Jersey and Pennsylvania, and counties elsewhere which are classified as urban

4. Enumeration districts in unincorporated territory with a population density of 1,000 inhabitants or more per square mile (The area of large nonresidential tracts devoted to such urban land uses as railroad yards, factories, and cemeteries, was excluded in computing the population density of an enumeration district.)

5. Other enumeration districts in unincorporated territory with lower population density provided that they served one of the following purposes:

   a. To eliminate enclaves

   b. To close indentations in the urbanized area of one mile or less across the open end

   c. To link outlying enumeration districts of qualifying density that were no more than 1½ miles from the main body of the urbanized area.

Contiguous urbanized areas with central cities in the same standard metropolitan statistical area are combined. Urbanized areas with central cities in different standard metropolitan statistical areas are not combined, except that a single urbanized area was established in the New York-Northeastern New Jersey Standard Consolidated Area, and in the Chicago-Northwestern Indiana Standard Consolidated Area.

The boundaries of the urbanized areas for 1960 will not conform to those for 1950, partly because of actual changes in land use and density of settlement, and partly because of relatively minor changes in the rules used to define the boundaries. The changes in the rules include the following:

1. The use of enumeration districts to construct the urbanized areas in 1960 resulted in a less precise definition than in 1950 when the limits were selected in the field using individual blocks as the unit of area added. On the other hand, the 1960 procedures produced an urbanized area based on the census results rather than an area defined about a year before the census, as in 1950.

2. Unincorporated territory was included in the 1950 urbanized area if it contained at least 500 dwelling units per square mile, which is somewhat different criterion than the 1,000 persons or more per square mile of the included 1960 unincorporated areas.

3. The 1960 areas include those entire towns in New England, townships in New Jersey and Pennsylvania, and counties that are classified as urban in accordance with the criteria listed in the section on urban-rural residence. The 1950 criteria permitted the exclusion of portions of these particular minor civil divisions.

In general, however, the urbanized areas of 1950 and 1960 are based on essentially the same concept, and the figures for a given urbanized area may be used to measure the population growth of that area.

An urbanized area may be thought of as divided into the central city, or cities, and the remainder of the area,

or the urban fringe. Any city in an urbanized area which is a central city of a standard metropolitan statistical area (see the following section) is also a central city of the urbanized area. With but two exceptions, the names of the central cities appear in the titles of the areas. The central cities of the New York-Northeastern New Jersey Area are the central cities of the New York, Newark, Jersey City, and Paterson-Clifton-Passaic Standard Metropolitan Statistical Areas. Likewise, the central cities of the Chicago-Northwestern Indiana Area are the central cities of the Chicago and Gary-Hammond-East Chicago Standard Metropolitan Statistical Areas.

Data for the entire urbanized area are shown in this report in table 10 for each State in which a central city of the area is located. If that part of an urbanized area that extends into another State does not include a central city, data are shown only for that part within the State.

Standard metropolitan statistical areas.—It has been long recognized that for many types of social and economic analysis it is necessary to consider as a unit the entire population in and around the city whose activities form an integrated social and economic system. Prior to the 1950 Census, areas of this type had been defined in somewhat different ways for different purposes and by various agencies. Leading examples were the metropolitan districts of the Census of Population, the industrial areas of the Census of Manufactures, and the labor market areas of the Bureau of Employment Security. To permit all Federal statistical agencies to utilize the same areas for the publication of general-purpose statistics, the Bureau of the Budget has established standard metropolitan statistical areas (SMSA's).[3]

Except in New England, an SMSA is a county or group of contiguous counties which contains at least one city of 50,000 inhabitants or more or "twin cities" with a combined population of at least 50,000. In addition to the county, or counties, containing such a city or cities, con-

[3] See also the Bureau of the Budget publication *Standard Metropolitan Statistical Areas*, U.S. Government Printing Office, Washington 25, D.C., 1959.

tiguous counties are included in an SMSA if, according to certain criteria, they are essentially metropolitan in character and are socially and economically integrated with the central city. The criteria followed in the delineation of SMSA's relate to a city, or cities, of sufficient population size to constitute the central city and to the economic and social relationships with contiguous counties that are metropolitan in character.

1. Each SMSA must include at least:

   a. One city with 50,000 inhabitants or more, or

   b. Two cities having contiguous boundaries and constituting, for general economic and social purposes, a single community with a combined population of at least 50,000, the smaller of which must have a population of at least 15,000.

2. If two or more adjacent counties each have a city of 50,000 inhabitants or more and the cities are within 20 miles of each other (city limits to city limits), they will be included in the same area unless there is definite evidence that the two cities are not economically and socially integrated.

The criteria of metropolitan character relate primarily to the attributes of the outlying county as a place of work or as a home for a concentration of nonagricultural workers. Specifically, these criteria are:

3. At least 75 percent of the labor force of the county must be in the nonagricultural labor force.

4. In addition to criterion 3, the county must meet at least one of the following conditions:

   a. It must have 50 percent or more of its population living in contiguous minor civil divisions with a density of at least 150 persons per square mile, in an unbroken chain of minor civil divisions with such density radiating from a central city in the area.

b. The number of nonagricultural workers employed in the county must equal at least 10 percent of the number of nonagricultural workers employed in the county containing the largest city in the area, or the outlying county must be the place of employment of at least 10,000 nonagricultural workers.

c. The nonagricultural labor force living in the county must equal at least 10 percent of the nonagricultural labor force living in the county containing the largest city in the area, or the outlying county must be the place of residence of a nonagricultural labor force of at least 10,000.

5. In New England, the city and town are administratively more important than the county, and data are compiled locally for such minor civil divisions. Here, towns and cities are the units used in defining SMSA's. In New England, because smaller units are used and more restricted areas result, a population density of at least 100 persons per square mile is used as the measure of metropolitan character.

The criteria of integration relate primarily to the extent of economic and social communication between the outlying counties and the central county.

6. A county is regarded as integrated with the county or counties containing the central cities of the area if either of the following criteria is met:

a. If 15 percent of the workers living in the given outlying county work in the county or counties containing the central city or cities of the area, or

[fol. 32d] b. If 25 percent of those working in the given outlying county live in the county or counties containing the central city or cities of the area.

Only where data for criteria 6a and 6b are not conclusive are other related types of information used. This information includes such items as average telephone calls per subscriber per month from the county to the county

containing central cities of the area; percent of the population in the county located in the central city telephone exchange area; newspaper circulation reports prepared by the Audit Bureau of Circulation; analysis of charge accounts in retail stores of central cities to determine the extent of their use by residents of the contiguous county; delivery service practices of retail stores in central cities; official traffic counts; the extent of public transportation facilities in operation between central cities and communities in the contiguous county; and the extent to which local planning groups and other civic organizations operate jointly.

7. Although there may be several cities of 50,000 or more in an SMSA, not all are necessarily central cities. The following criteria are used for determining central cities:

a. The largest city in an SMSA is always a central city.

b. In addition, one or two additional cities may be secondary central cities on the basis and in the order of the following criteria:

(1) The additional city or cities have at least 250,000 inhabitants.

(2) The additional city or cities have a population of one-third or more of that of the largest city and a minimum population of 25,000, except that both cities are central cities in those instances where cities qualify under criterion 1b. (A city which qualified as a secondary central city in 1950 but which does not qualify in 1960 has been temporarily retained as a central city.)

8. The titles of the SMSA's consist of the names of the central cities followed by the names of the States in which the areas are located.

In this report, data for SMSA's which cross State lines are shown in full in table 11 for each State in which a central city is located. If that part of an SMSA that

extends into another State does not include a central city, data are shown only for the part within the State. In table 12 only that part of the SMSA which is within the State is shown.

In the 1950 Census reports, data were presented for standard metropolitan areas (SMA's) and in several earlier censuses a somewhat similar type of area called the "metropolitan district" was used. In 1959, the criteria for delineating SMA's were revised by the Bureau of the Budget, and, at the same time, the areas were designated as standard metropolitan statistical areas. The comparative figures shown here for 1950 apply to the SMSA as defined in 1960.

Standard consolidated areas.—In view of the special importance of the metropolitan complexes around New York and Chicago, the Nation's largest cities, several contiguous SMSA's and additional counties that do not appear to meet the formal integration criteria but do have strong interrelationships of other kinds have been combined into the New York-Northeastern New Jersey and the Chicago-Northwestern Indiana Standard Consolidated Areas, respectively. The former is identical with the New York-Northeastern New Jersey SMA of 1950, and the latter corresponds roughly to the Chicago SMA (two more counties having been added).

LIST OF TABLES AND LIST OF MAPS

See Opposite ☞

NUMBER OF INHABITANTS

New York

LIST OF TABLES

[Page numbers listed here omit the State prefix number which appears as part of the page number for each page. The prefix for this State is 34]

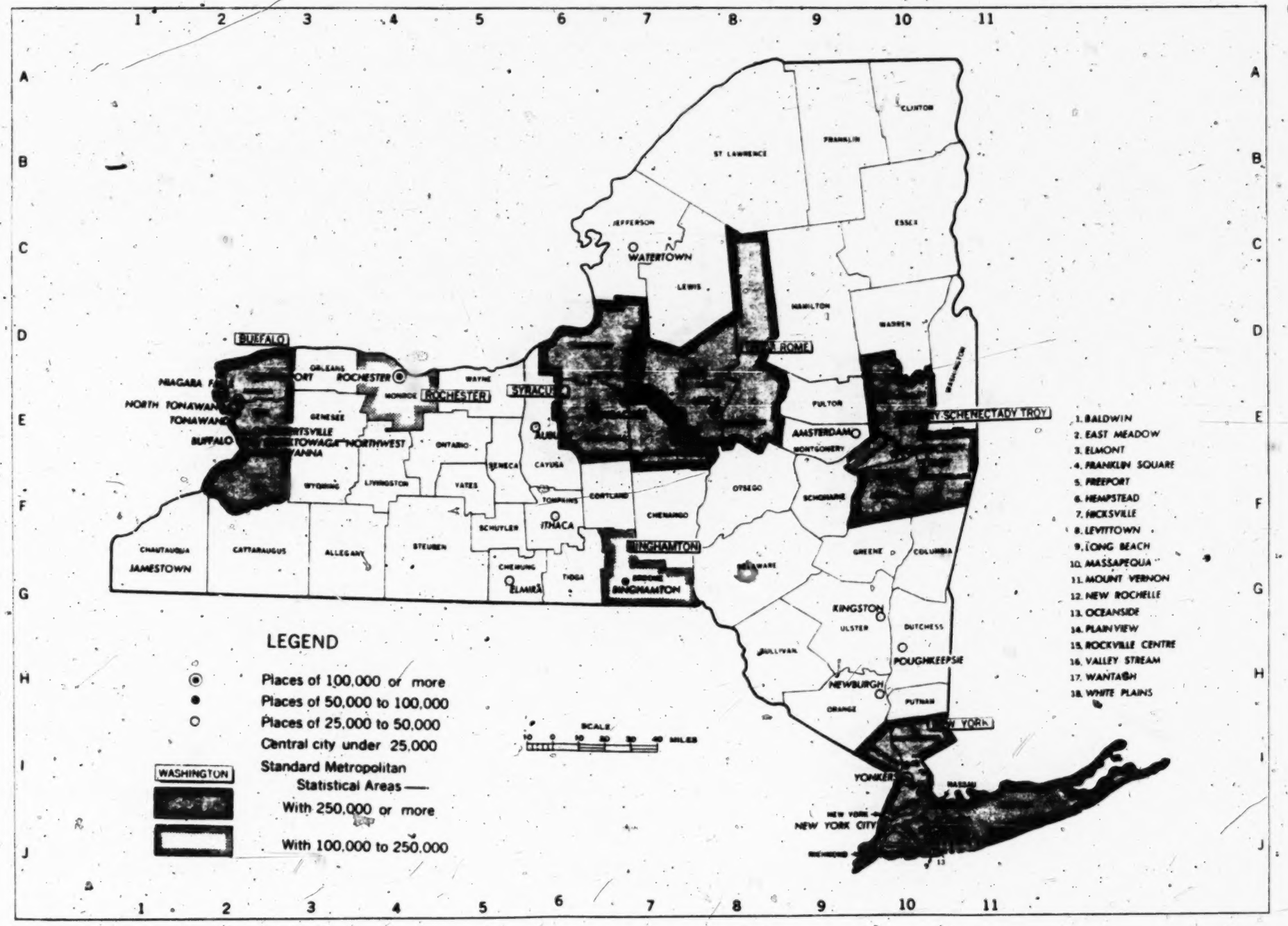
Table		Page
1.	Population of the State, urban and rural: 1790 to 1960	7
2.	Population in groups of places according to size: 1960 and 1950	7
3.	Population in groups of places according to size: 1900 to 1960	8
4.	Population in incorporated and unincorporated places according to size: 1960	9
5.	Population of incorporated places of 10,000 or more from earliest census to 1960	9
6.	Area and population of counties, urban and rural: 1960 and 1950	13
7.	Population of counties, by minor civil divisions: 1940 to 1960	14
8.	Population of all incorporated places and of unincorporated places of 1,000 or more: 1940 to 1960	21
9.	1960 population of areas annexed between 1950 and 1960 by incorporated places having 2,500 inhabitants or more in 1950	25
10.	Population of urbanized areas: 1960 and 1950	26
11.	Population of standard metropolitan statistical areas: 1960 and 1950	29
11a.	Population of the New York-Northeastern New Jersey Standard Consolidated Area: 1960 and 1950	30
12.	Population of the State and of standard metropolitan statistical areas, by type of residence: 1960	30

LIST OF MAPS

The State, showing counties, places of 25,000 or more, and standard metropolitan statistical areas	2
The State, showing minor civil divisions	3
Urbanized areas (separate map for each area)	31

[fol. 32f]

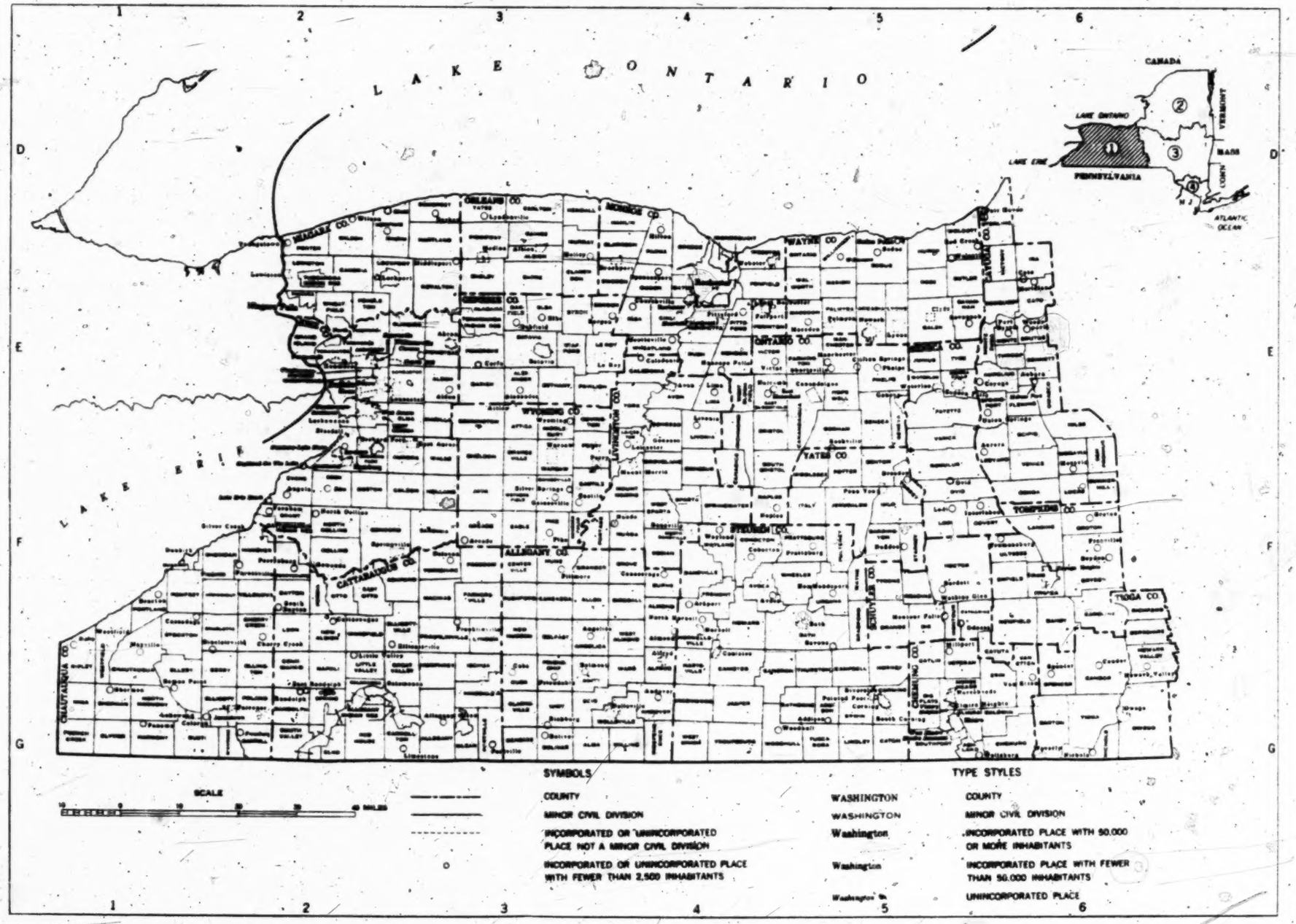
NEW YORK—COUNTIES, PLACES OF 25,000 OR MORE, AND STANDARD METROPOLITAN STATISTICAL AREAS



[fol. 32g]

NEW YORK—SECTION 1

MINOR CIVIL DIVISIONS—CITIES AND TOWNS



Large-scale copies of this map may be purchased from Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., after April 1, 1961

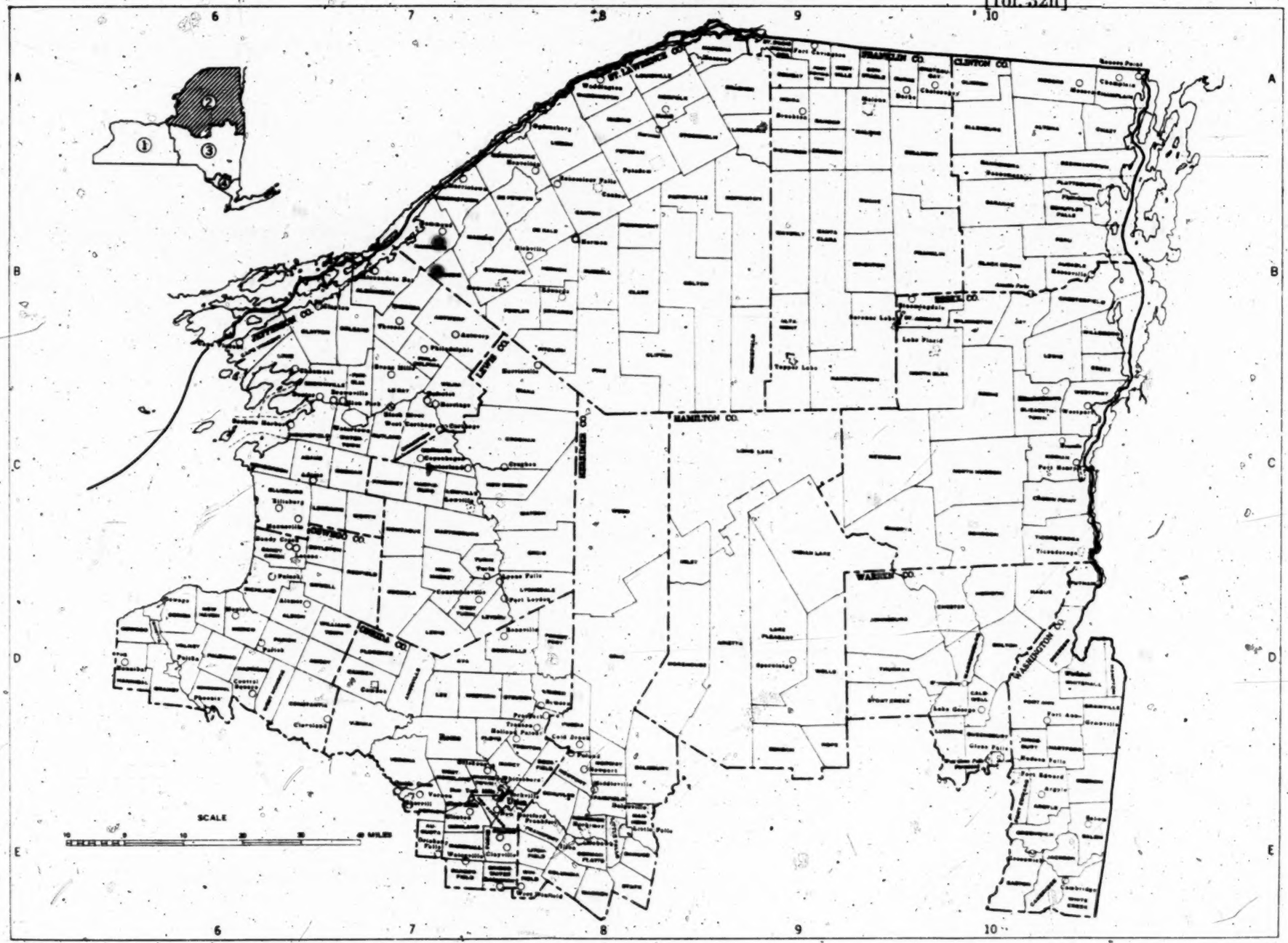
32g

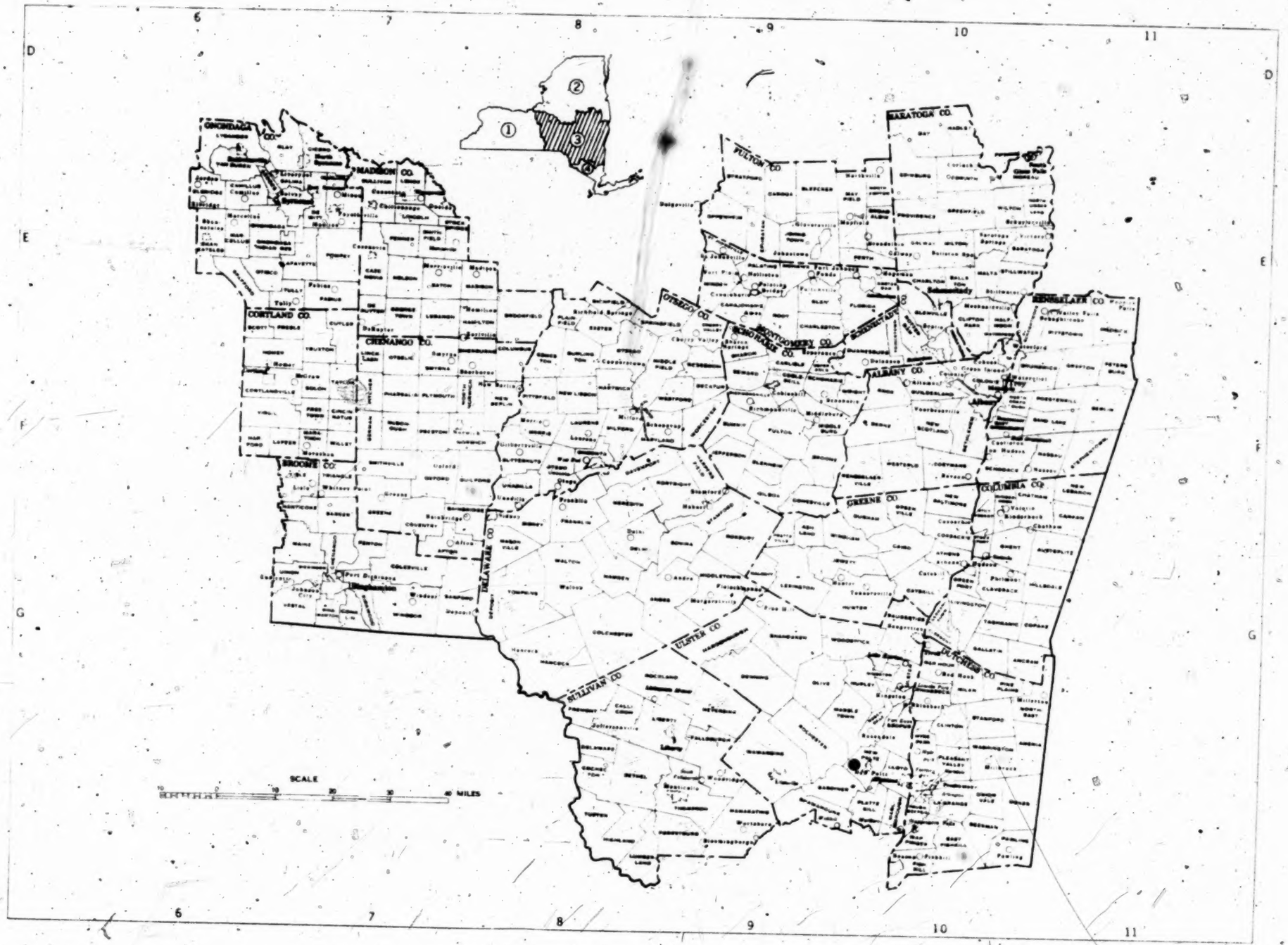
34-3

NEW YORK—SECTIONS 2 AND 3

MINOR CIVIL DIVISIONS—CITIES AND TOWNS

[fol. 32h]




6
7
8
9
10
11
D
E
F
G
ONONDAGA CO.
MADISON CO.
CORTLAND CO.
CHENANGO CO.
BROOME CO.
DELAWARE CO.
OTSEGO CO.
SCHOHARIE CO.
MONTGOMERY CO.
SCHENECTADY
ALBANY CO.
SARATOGA CO.
FULTON CO.
RENSSELAER CO.
GREENE CO.
COLUMBIA CO.
ULSTER CO.
SULLIVAN CO.
DUTCHESS CO.
SCALE
MILES

NEW YORK—SECTION 4

MINOR CIVIL DIVISIONS—CITIES AND TOWNS

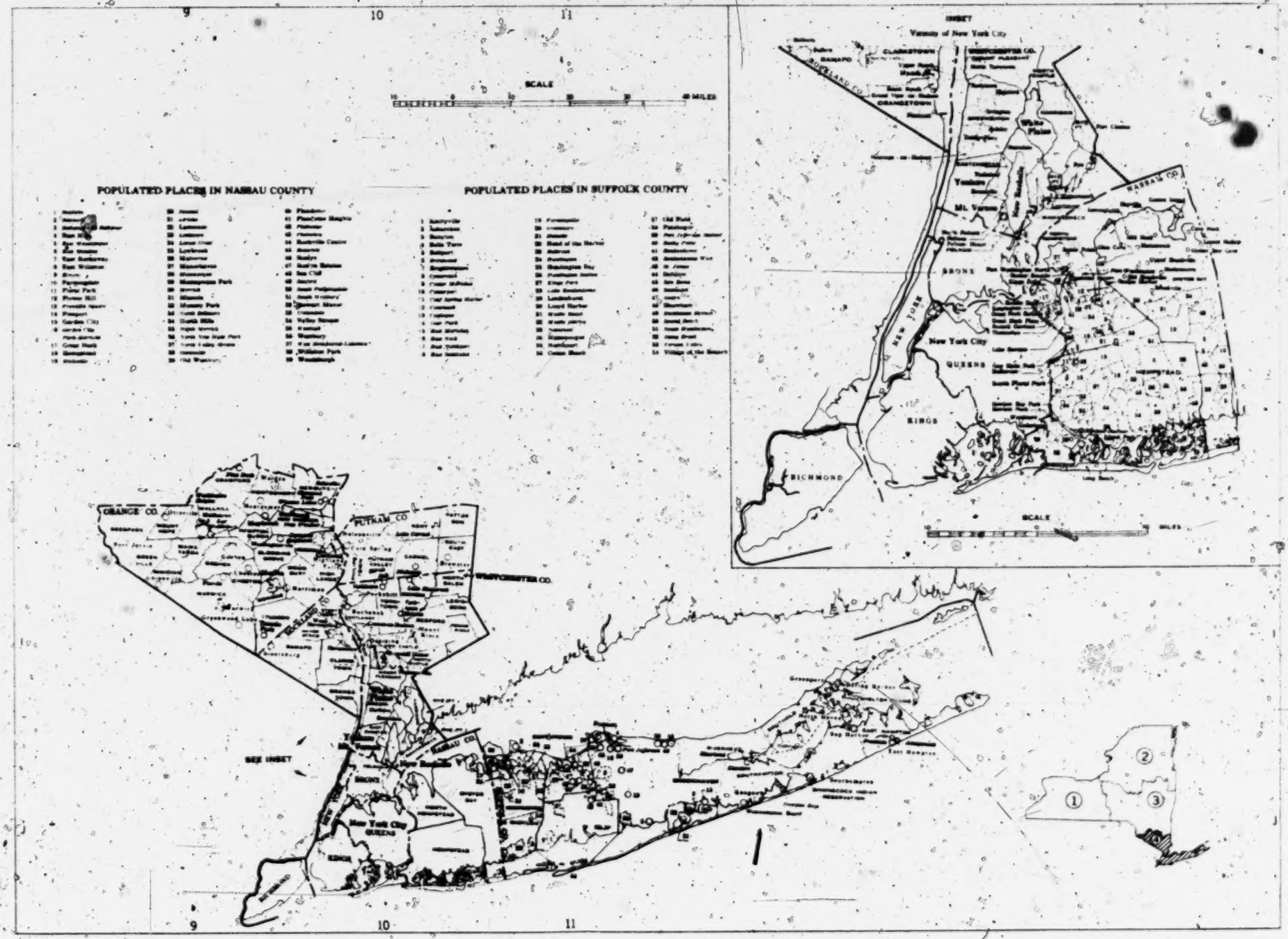


Table 1.—POPULATION OF THE STATE, URBAN AND RURAL: 1790 TO 1960

[For description of current and previous urban definitions, see text. Minus sign (–) denotes decrease]

Census date	The State			Urban territory				Rural territory			Percent of total	
	Population	Increase over preceding census		Number of urban places	Population	Increase over preceding census		Population	Increase over preceding census		Urban	Rural
		Number	Percent			Number	Percent		Number	Percent		
Current urban definition												
1960 (Apr. 1)	16,782,304	1,952,112	13.2	326	[1]14,331,925	1,649,479	13.0	2,450,379	302,633	14.1	85.4	14.6
1950 (Apr. 1)	14,830,192	1,351,050	10.0	230	[2]12,682,446	...	...	2,147,746	...	...	85.5	14.5
Previous urban definition:												
1960 (Apr. 1)	16,782,304	1,952,112[3]	13.2	251	[2]12,220,792	313,658	2.6	4,561,602	1,638,454	56.1	72.8	27.2
1950 (Apr. 1)	14,830,192	1,351,050	10.0	214	[2]11,907,044	741,151	6.6	[2]2,923,148	809,899	38.4	80.3	19.7
1940 (Apr. 1)	13,479,142	891,076	7.1	203	11,165,893	643,941	6.1	2,313,249	247,155	12.0	82.8	17.2
1930 (Apr. 1)	12,588,066	2,202,839	21.2	196	10,521,952	1,933,366	22.5	2,066,114	269,473	15.0	83.6	16.4
1920 (Jan. 1)	10,385,227	1,271,613	14.0	169	8,588,586	1,400,455	19.5	1,796,641	-128,842	-6.7	82.7	17.3
1910 (Apr. 15)	9,113,614	1,844,720	25.4	149	7,188,131	1,890,020	35.7	1,925,483	-45,300	-2.3	78.9	21.1
1900 (June 1)	7,268,894	1,265,720	21.1	122	5,298,111	1,387,833	35.5	1,970,783	-122,113	-5.8	72.9	27.1
1890 (June 1)	6,003,174	920,303	18.1	117	3,910,278	1,041,749	36.3	2,092,896	-121,446	-5.5	65.1	34.9
1880 (June 1)	5,082,871	700,112	16.0	98	2,868,529	679,074	31.0	2,214,342	21,038	1.0	56.4	43.6
1870 (June 1)	4,382,759	502,024	12.9	88	2,189,455	665,111	43.6	2,193,304	-163,087	-6.9	50.0	50.0
1860 (June 1)	3,880,735	783,341	25.3	31	1,524,344	650,930	74.5	2,356,391	132,411	6.0	39.3	60.7
1850 (June 1)	3,097,394	668,473	27.5	16	[4]873,414	402,143	85.3	2,223,980	266,325	13.6	28.2	71.8
1840 (June 1)	2,428,921	510,313	26.6	10	[5]471,266	184,648	64.4	1,957,655	325,665	20.0	19.4	80.6
1830 (June 1)	1,918,608	345,796	39.8	9	286,618	125,622	78.0	1,631,990	430,174	34.7	14.9	85.1
1820 (Aug. 7)	1,372,812	413,763	43.1	7	160,996	39,508	32.5	1,211,816	374,255	44.7	11.7	88.3
1810 (Aug. 6)	959,049	369,998	62.8	5	121,488	46,731	62.5	837,561	323,267	62.9	12.7	87.3
1800 (Aug. 4)	589,051	248,931	73.2	4	74,757	35,544	90.6	514,294	213,387	70.9	12.7	87.3
1790 (Aug. 2)	[6]340,120	...	...	3	39,213	...	...	300,907	...	...	11.5	88.5

[1] Includes 1,029,893 persons in urban territory outside urban places.
[2] Includes 733,408 persons in urban territory outside urban places.
[3] Revised since publication of 1950 reports.
[4] Excludes population (30,780) of Williamsburgh village erroneously omitted from count of urban places.
[5] Excludes population (5,094) of Williamsburgh village erroneously omitted from count of urban places.
[6] Excludes population (85,425) of Vermont, which was enumerated separately.

Table 2.—POPULATION IN GROUPS OF PLACES ACCORDING TO SIZE: 1960 AND 1950

[Percent not shown where less than 0.1]

Type of area and size of place	1960				1950			
	Number of places	Population	Percent of total population	Percent of total	Number of places	Population	Percent of total population	Percent of total
The State	...	16,782,304	100.0	...	...	14,830,192	100.0	...
URBAN								
Total	([1])	14,331,925	85.4	100.0	([2])	12,682,446	85.5	100.0
Within urbanized areas	...	12,918,455	77.0	90.1	...	11,378,908	76.7	89.7
Central cities, total	10	9,356,289	55.8	65.3	10	9,597,328	64.7	75.7
Cities of 1,000,000 or more	1	7,781,984	46.4	54.3	1	7,891,957	53.2	62.2
Cities of 500,000 to 1,000,000	1	532,759	3.2	3.7	1	580,132	3.9	4.6
Cities of 250,000 to 500,000	1	318,611	1.9	2.2	1	332,488	2.2	2.6
Cities of 100,000 to 250,000	3	446,174	2.7	3.1	3	457,109	3.1	3.6
Cities of 50,000 to 100,000	4	276,761	1.6	1.9	4	335,642	2.3	2.6
Cities under 50,000	...	...	...	...	...	...	...	...
Urban fringe, total	...	3,562,166	21.2	24.8	...	1,779,580	12.0	14.0
Places of 2,500 or more	140	2,532,271	15.1	17.6	76	1,046,172	7.1	8.2
Places of 100,000 or more	2	293,028	1.7	2.0	1	132,798	1.0	1.2
Places of 50,000 to 100,000	7	455,121	2.7	3.2	2	131,624	0.9	1.0
Places of 25,000 to 50,000	16	533,736	3.2	3.7	4	127,113	0.9	1.0
Places of 10,000 to 25,000	58	924,013	5.5	6.4	21	364,970	2.5	2.9
Places of 5,000 to 10,000	34	235,410	1.4	1.6	26	183,910	1.2	1.5
Places of 2,500 to 5,000	25	90,963	0.5	0.6	22	85,757	0.6	0.7
Places under 2,500	41	55,844	0.3	0.4	40	55,931	0.4	0.4
Places of 2,000 to 2,500	7	15,744	0.1	0.1	9	20,247	0.1	0.2
Places of 1,500 to 2,000	8	14,477	0.1	0.1	11	19,717	0.1	0.2
Places of 1,000 to 1,500	15	18,392	0.1	0.1	7	8,261	0.1	0.1
Places under 1,000	11	7,432	...	0.1	13	7,706	0.1	0.1
Other urban territory	...	994,051	5.8	6.8	...	677,477	4.6	5.3
Outside urbanized area	176	1,413,470	8.4	9.9	144	1,305,538	8.8	10.3
Places of 25,000 or more	10	339,473	2.0	2.4	11	394,250	2.7	3.1
Places of 10,000 to 25,000	26	434,588	2.5	3.0	24	392,071	2.6	3.1
Places of 5,000 to 10,000	49	334,153	2.0	2.3	35	248,002	1.7	2.0
Places of 2,500 to 5,000	91	313,256	1.9	2.2	74	271,215	1.8	2.1
RURAL								
Total	...	2,450,379	14.6	100.0	...	2,147,746	14.5	100.0
Places of 1,000 to 2,500	196	309,230	1.8	12.6	195	299,643	2.0	13.9
Places of 2,000 to 2,500	39	86,386	0.5	3.5	29	64,746	0.4	3.0
Places of 1,500 to 2,000	57	99,601	0.6	4.1	65	111,882	0.8	5.2
Places of 1,000 to 1,500	100	123,253	0.7	5.0	101	123,015	0.8	5.7
Other rural territory	...	2,141,149	12.8	87.4	...	1,848,103	12.5	86.0

[fol. 32k]

1870 (June 1)	4,382,759	902,040	12.9	88	2,189,455	865,111	43.6	2,193,304	-163,087	-6.9	50.0	50.0
1860 (June 1)	3,880,735	783,341	25.3	31	1,524,344	650,930	74.5	2,356,391	132,411	6.0	39.3	60.7
1850 (June 1)	3,097,394	668,473	27.5	16	4973,414	402,148	85.3	2,223,980	266,325	13.6	26.9	73.8
1840 (June 1)	2,428,921	310,313	26.6	10	478,266	186,648	64.4	1,957,655	325,665	20.0	19.4	80.6
1830 (June 1)	1,918,608	345,796	19.8	9	286,618	125,622	78.0	1,631,990	420,174	34.7	14.9	85.1
1820 (Aug. 7)	1,372,812	413,763	43.1	7	160,996	39,508	32.5	1,211,816	374,235	44.7	11.7	88.3
1810 (Aug. 6)	999,049	369,998	62.8	5	121,488	46,731	62.5	837,561	323,267	62.9	12.7	87.3
1800 (Aug. 4)	589,051	248,931	73.2	4	74,797	35,544	90.6	514,294	213,387	70.9	12.7	87.3
1790 (Aug. 2)	[4]340,120	...	...	3	39,213	...	...	300,907	...	...	11.5	88.5

[1] Includes 1,029,895 persons in urban territory outside urban places.
[2] Includes 733,408 persons in urban territory outside urban places.
[3] Revised since publication of 1950 reports.
[4] Excludes population (30,780) of Williamsburgh village erroneously omitted from count of urban places.
[5] Excludes population (5,084) of Williamsburgh village erroneously omitted from count of urban places.
[6] Excludes population (85,425) of Vermont, which was enumerated separately.

Table 2.—POPULATION IN GROUPS OF PLACES ACCORDING TO SIZE: 1960 AND 1950

[Percent not shown where less than 0.1]

Type of area and size of place	1960				1950			
	Number of places	Population	Percent of total population	Percent of total	Number of places	Population	Percent of total population	Percent of total
The State	...	16,782,304	100.0	...	...	14,830,192	100.0	...
URBAN								
Total	([1])	14,331,925	85.4	100.0	([2])	12,682,446	85.5	100.0
Within urbanized areas	...	12,918,455	77.0	90.1	...	11,376,908	76.7	89.7
Central cities, total	10	9,356,289	55.8	65.3	10	9,597,328	64.7	75.7
Cities of 1,000,000 or more	1	7,781,984	46.4	54.3	1	7,891,957	53.2	62.2
Cities of 500,000 to 1,000,000	1	532,759	3.2	3.7	1	580,132	3.9	4.6
Cities of 250,000 to 500,000	1	318,611	1.9	2.2	1	332,488	2.2	2.6
Cities of 100,000 to 250,000	3	446,174	2.7	3.1	3	457,109	3.1	3.6
Cities of 50,000 to 100,000	4	276,761	1.6	1.9	4	335,642	2.3	2.6
Cities under 50,000	...	...	...	...	...	...	...	...
Urban fringe, total	...	3,562,166	21.2	24.8	...	1,779,580	12.0	14.0
Places of 2,500 or more	140	2,532,271	15.1	17.6	76	1,046,172	7.1	8.2
Places of 100,000 or more	2	293,628	1.7	2.0	1	152,798	1.0	1.2
Places of 50,000 to 100,000	7	455,121	2.7	3.2	2	131,624	0.9	1.0
Places of 25,000 to 50,000	16	533,736	3.2	3.7	4	127,113	0.9	1.0
Places of 10,000 to 25,000	56	924,013	5.5	6.4	21	364,970	2.5	2.9
Places of 5,000 to 10,000	34	235,410	1.4	1.6	26	183,910	1.2	1.5
Places of 2,500 to 5,000	25	90,963	0.5	0.6	22	85,757	0.6	0.7
Places under 2,500	41	55,844	0.3	0.4	40	55,931	0.4	0.4
Places of 2,000 to 2,500	7	13,743	0.1	0.1	9	20,247	0.1	0.2
Places of 1,500 to 2,000	8	14,477	0.1	0.1	11	19,717	0.1	0.2
Places of 1,000 to 1,500	15	18,192	0.1	0.1	7	8,261	0.1	0.1
Places under 1,000	11	7,432	....	0.1	13	7,706	0.1	0.1
Other urban territory	...	974,051	5.8	6.8	...	677,477	4.6	5.3
Outside urbanized areas	176	1,413,470	8.4	9.9	144	1,305,538	8.8	10.3
Places of 25,000 or more	10	339,473	2.0	2.4	11	394,250	2.7	3.1
Places of 10,000 to 25,000	26	426,588	2.5	3.0	24	392,071	2.6	3.1
Places of 5,000 to 10,000	49	334,153	2.0	2.3	35	248,002	1.7	2.0
Places of 2,500 to 5,000	91	313,256	1.9	2.2	74	271,215	1.8	2.1
RURAL								
Total	...	2,450,379	14.6	100.0	...	2,147,746	14.5	100.0
Places of 1,000 to 2,500	196	309,250	1.8	12.6	195	299,643	2.0	13.9
Places of 2,000 to 2,500	39	86,386	0.5	3.5	29	64,746	0.4	3.0
Places of 1,500 to 2,000	57	99,601	0.6	4.1	65	111,882	0.8	5.2
Places of 1,000 to 1,500	100	123,253	0.7	5.0	101	123,015	0.8	5.7
Other rural territory	...	2,141,129	12.8	87.4	...	1,848,103	12.5	86.0
URBANIZED AREAS								
Total	7	12,918,455	77.0	100.0	9	11,376,908	76.7	100.0
Areas of 1,000,000 or more	2	11,290,400	67.3	87.4	1	9,130,205	61.6	80.3
Areas of 500,000 to 1,000,000	...	...	...	...	1	798,043	5.4	7.0
Areas of 250,000 to 500,000	3	1,282,135	7.6	9.9	3	966,332	6.5	8.5
Areas of 100,000 to 250,000	2	345,920	2.1	2.7	3	384,708	2.6	3.4
Areas under 100,000	...	...	...	...	1	97,620	0.7	0.9

[1] There were 326 places of 2,500 or more.
[2] There were 230 places of 2,500 or more.

[fol. 32k]

32K

Table 3.—POPULATION IN GROUPS OF PLACES ACCORDING TO SIZE: 1900 TO 1960

Subject and size of place	1960		1950		1940	1930	1920	1910	1900
	Current urban definition	Previous urban definition	Current urban definition	Previous urban definition[1]					
NUMBER OF PLACES									
Urban territory	367	251	270	214	203	196	169	149	122
Places of 2,500 or more	326	251	230	214	203	196	169	149	122
Places of 1,000,000 or more	1	1	1	1	1	1	1	1	1
Places of 500,000 to 1,000,000	1	1	1	1	1	1	1	...	...
Places of 250,000 to 500,000	1	1	1	1	1	1	1	1	1
Places of 100,000 to 250,000	5	5	4	4	4	4	3	3	2
Places of 50,000 to 100,000	11	8	6	6	6	6	5	4	3
Places of 25,000 to 50,000	26	19	15	16	10	10	11	12	5
Places of 10,000 to 25,000	82	52	45	45	48	47	36	30	28
Places of 5,000 to 10,000	83	71	61	55	48	41	30	25	26
Places of 2,500 to 5,000	116	93	96	85	84	85	81	73	56
Places under 2,500	41	...	40	...	...	...	...	...	...
Rural territory	380	365	410	399	408	400	365	351	337
Places of 1,000 to 2,500	196	170	195	171	148	146	144	150	145
Places under 1,000	184	195	215	228	260	254	221	201	192
Cumulative summary									
Places of 1,000,000 or more	1	1	1	1	1	1	1	1	1
Places of 500,000 or more	2	2	2	2	2	2	2	1	1
Places of 250,000 or more	3	3	3	3	3	3	3	2	2
Places of 100,000 or more	8	8	7	7	7	7	6	5	4
Places of 50,000 or more	19	16	13	13	13	13	11	9	7
Places of 25,000 or more	45	35	28	29	23	23	22	21	12
Places of 10,000 or more	127	87	73	74	71	70	58	51	40
Places of 5,000 or more	210	158	134	129	119	111	88	76	66
Places of 2,500 or more	326	251	230	214	203	196	169	149	122
POPULATION									
Urban territory	14,231,925	12,220,702	12,682,446	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
Places of 2,500 or more	13,302,030	12,220,702	11,949,038	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
Places of 1,000,000 or more	7,781,984	7,781,984	7,891,957	7,891,957	7,454,995	6,930,446	5,620,048	4,766,883	3,437,202
Places of 500,000 to 1,000,000	532,759	532,759	580,132	580,132	575,901	573,076	506,775	...	...
Places of 250,000 to 500,000	318,611	318,611	332,488	332,488	326,975	328,132	295,750	423,715	332,389
Places of 100,000 to 250,000	739,202	739,202	609,907	609,907	579,660	573,124	385,237	455,681	270,982
Places of 50,000 to 100,000	731,883	535,405	487,266	487,266	439,961	436,096	372,435	303,861	211,185
Places of 25,000 to 50,000	873,209	625,854	521,363	535,780	363,702	364,045	382,665	381,461	185,277
Places of 10,000 to 25,000	1,348,601	875,527	737,041	764,117	792,092	780,349	540,139	439,571	458,937
Places of 5,000 to 10,000	569,563	482,904	431,912	387,156	326,282	277,831	200,549	162,373	184,029
Places of 2,500 to 5,000	406,219	328,906	356,972	318,241	306,325	308,873	285,008	254,616	198,112
Places under 2,500	55,864	...	55,931	...	...	...	...	...	...
Other urban territory	984,051	...	677,477	...	...	...	...	...	...
Rural territory	2,450,379	4,361,602	2,147,746	2,923,148	2,313,269	2,066,114	1,796,661	1,925,483	1,970,783
Places of 1,000 to 2,500	309,250	269,844	299,643	275,873	231,658	228,791	229,086	235,197	231,521
Places under 1,000	107,700	115,132	120,862	128,568	139,813	135,139	117,791	117,097	114,205
Other rural territory	2,033,429	4,176,626	1,727,241	2,518,707	1,941,798	1,702,184	1,449,764	1,573,189	1,625,057
Cumulative summary									
Places of 1,000,000 or more	7,781,984	7,781,984	7,891,957	7,891,957	7,454,995	6,930,446	5,620,048	4,766,883	3,437,202
Places of 500,000 or more	8,314,743	8,314,743	8,472,089	8,472,089	8,030,896	7,503,522	6,126,823	4,766,883	3,437,202
Places of 250,000 or more	8,633,354	8,633,354	8,804,577	8,804,577	8,357,871	7,831,654	6,422,573	5,190,598	3,789,589
Places of 100,000 or more	9,372,556	9,372,556	9,414,484	9,414,484	8,935,531	8,404,778	6,807,810	5,646,279	4,060,571
Places of 50,000 or more	10,104,438	9,907,961	9,881,750	9,881,750	9,375,492	8,840,874	7,180,245	5,950,140	4,271,756
Places of 25,000 or more	10,977,647	10,533,765	10,403,113	10,437,530	9,741,194	9,204,899	7,562,890	6,331,971	4,457,033
Places of 10,000 or more	12,326,248	11,409,292	11,160,154	11,201,647	10,533,286	9,935,248	8,103,029	6,771,142	4,915,970
Places of 5,000 or more	12,895,811	11,892,196	11,992,066	11,988,803	10,859,568	10,213,079	8,303,578	6,933,515	5,099,999
Places of 2,500 or more	13,302,030	12,220,702	11,949,038	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
PERCENT OF TOTAL POPULATION									
Urban territory	85.4	72.8	85.3	80.3	82.8	83.6	82.7	78.9	72.9
Places of 2,500 or more	79.3	72.8	80.6	80.3	82.8	83.6	82.7	78.9	72.9
Places of 1,000,000 or more	46.4	46.4	53.2	53.2	55.3	55.1	54.1	52.3	47.3
Places of 500,000 to 1,000,000	3.2	3.2	3.9	3.9	4.3	4.6	4.9	...	...
Places of 250,000 to 500,000	1.9	1.9	2.2	2.2	2.4	2.6	2.8	4.6	4.6
Places of 100,000 to 250,000	4.4	4.4	4.1	4.1	4.3	4.6	3.7	5.0	3.7
Places of 50,000 to 100,000	4.4	3.2	3.2	3.2	3.3	3.5	3.6	3.3	2.9
Places of 25,000 to 50,000	5.2	3.7	3.5	3.7	2.7	2.9	3.7	4.2	2.5
Places of 10,000 to 25,000	8.0	5.2	5.1	5.2	5.9	5.8	5.2	4.8	6.3
Places of 5,000 to 10,000	3.4	2.9	2.9	2.6	2.4	2.2	1.9	1.8	2.5
Places of 2,500 to 5,000	2.4	2.0	2.4	2.1	2.3	2.3	2.7	2.8	2.7
Places under 2,500	0.3	...	0.4	...	...	...	...	...	...
Other urban territory	5.8	...	4.6	...	...	...	...	...	...
Rural territory	14.6	27.2	14.5	19.7	17.2	16.4	17.3	21.1	27.1
Places of 1,000 to 2,500	1.8	1.6	2.0	1.9	1.7	1.8	2.2	2.6	1.2
Places under 1,000	0.6	0.7	0.8	0.9	1.0	1.1	1.1	1.3	1.6
Other rural territory	12.1	24.9	11.6	17.0	14.4	13.5	14.0	17.3	22.4

[1] Vol. 32]

Rural territory	380	365	410	399	408	400	365	351	337
Places of 1,000 to 2,500	196	170	195	171	148	146	144	150	145
Places under 1,000	184	195	215	228	260	254	221	201	192
Cumulative summary									
Places of 1,000,000 or more	1	1	1	1	1	1	1	1	1
Places of 500,000 or more	2	2	2	2	2	2	2	1	1
Places of 250,000 or more	3	3	3	3	3	3	3	2	2
Places of 100,000 or more	8	8	7	7	7	7	6	5	4
Places of 50,000 or more	19	18	13	13	13	13	11	9	7
Places of 25,000 or more	45	35	28	29	23	23	22	21	12
Places of 10,000 or more	127	87	73	74	71	70	58	51	40
Places of 5,000 or more	210	158	134	129	119	111	88	76	66
Places of 2,500 or more	326	251	230	214	203	196	169	149	122
POPULATION									
Urban territory	14,331,925	12,220,702	12,682,446	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
Places of 2,500 or more	13,302,030	12,220,702	11,949,038	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
Places of 1,000,000 or more	7,781,984	7,781,984	7,891,957	7,891,957	7,454,995	6,930,446	5,620,048	4,766,883	3,437,202
Places of 500,000 to 1,000,000	532,759	532,759	580,132	580,132	573,901	573,076	506,775	...	...
Places of 250,000 to 500,000	318,611	318,611	332,488	332,488	324,975	328,132	295,750	423,715	352,387
Places of 100,000 to 250,000	739,202	739,202	609,907	609,907	579,660	573,124	385,237	455,651	270,982
Places of 50,000 to 100,000	731,882	535,405	467,266	467,266	439,961	436,076	372,435	303,861	211,185
Places of 25,000 to 50,000	873,209	625,804	521,363	555,780	365,702	364,045	382,645	381,461	185,277
Places of 10,000 to 25,000	1,348,601	825,527	797,041	766,117	792,092	730,349	540,139	439,571	458,937
Places of 5,000 to 10,000	569,363	442,904	431,912	387,156	326,282	277,831	200,549	162,373	184,029
Places of 2,500 to 5,000	406,219	328,906	356,972	318,247	306,325	308,473	289,008	254,616	198,112
Places under 2,500	55,844	...	55,931	...	...	...	...	...	...
Other urban territory	994,051	...	677,477	...	...	...	...	...	...
Rural territory	2,450,379	4,561,602	2,147,746	2,923,148	2,313,269	2,066,114	1,796,641	1,925,483	1,970,783
Places of 1,000 to 2,500	309,250	269,844	299,643	275,873	231,558	228,791	229,086	235,197	231,521
Places under 1,000	107,700	115,132	120,862	128,568	139,813	135,139	117,791	117,097	114,205
Other rural territory	2,033,429	4,176,626	1,727,241	2,518,707	1,941,778	1,702,184	1,449,764	1,573,189	1,625,057
Cumulative summary									
Places of 1,000,000 or more	7,781,984	7,781,984	7,891,957	7,891,957	7,454,995	6,930,446	5,620,048	4,766,883	3,437,202
Places of 500,000 or more	8,314,743	8,314,743	8,472,089	8,472,089	8,030,896	7,503,522	6,126,823	4,766,883	3,437,202
Places of 250,000 or more	8,633,354	8,633,354	8,804,577	8,804,577	8,355,871	7,831,654	6,422,573	5,190,598	3,789,589
Places of 100,000 or more	9,372,556	9,372,556	9,414,484	9,414,484	8,935,531	8,404,778	6,807,810	5,646,249	4,060,571
Places of 50,000 or more	10,104,438	9,907,961	9,881,750	9,881,750	9,375,492	8,840,854	7,180,245	5,950,110	4,271,756
Places of 25,000 or more	10,977,647	10,533,765	10,403,113	10,437,530	9,741,194	9,204,899	7,562,890	6,331,571	4,457,033
Places of 10,000 or more	12,326,248	11,409,292	11,180,154	11,201,647	10,533,286	9,935,248	8,103,029	6,771,142	4,915,970
Places of 5,000 or more	12,895,811	11,892,196	11,592,066	11,588,803	10,859,568	10,213,079	8,303,578	6,933,515	5,099,999
Places of 2,500 or more	13,302,030	12,220,702	11,949,038	11,907,044	11,165,893	10,521,952	8,588,586	7,188,131	5,298,111
PERCENT OF TOTAL POPULATION									
Urban territory	85.4	72.8	85.3	80.3	82.8	83.6	82.7	78.9	72.9
Places of 2,500 or more	79.3	72.8	80.6	80.3	82.8	8336	82.7	78.9	72.9
Places of 1,000,000 or more	46.4	46.4	53.2	53.2	55.3	55.1	54.1	52.3	47.3
Places of 500,000 to 1,000,000	3.2	3.2	3.9	3.9	4.3	4.6	4.9	...	...
Places of 250,000 to 500,000	1.9	1.9	2.2	2.2	2.4	2.6	2.8	4.6	4.8
Places of 100,000 to 250,000	4.4	4.4	4.1	4.1	4.3	4.6	3.7	5.0	3.7
Places of 50,000 to 100,000	4.4	3.2	3.2	3.2	3.3	3.5	3.6	3.3	2.9
Places of 25,000 to 50,000	5.2	3.7	3.5	3.7	2.7	2.9	3.7	4.2	2.5
Places of 10,000 to 25,000	8.0	5.2	5.1	5.2	5.9	5.8	5.2	4.8	6.3
Places of 5,000 to 10,000	3.4	2.9	2.9	2.6	2.4	2.2	1.9	1.8	2.5
Places of 2,500 to 5,000	2.4	2.0	2.4	2.1	2.3	2.5	2.7	2.8	2.7
Places under 2,500	0.3	...	0.4	...	...	...	...	...	...
Other urban territory	5.8	...	4.6	...	...	...	...	...	...
Rural territory	14.6	27.2	14.5	19.7	17.2	16.4	17.3	21.1	27.1
Places of 1,000 to 2,500	1.8	1.6	2.0	1.9	1.7	1.8	2.2	2.6	3.2
Places under 1,000	0.6	0.7	0.8	0.9	1.0	1.1	1.1	1.3	1.6
Other rural territory	12.1	24.9	11.6	17.0	14.4	13.5	14.0	17.3	22.4
Cumulative summary									
Places of 1,000,000 or more	46.4	46.4	53.2	53.2	55.3	55.1	54.1	52.3	47.3
Places of 500,000 or more	49.5	49.5	57.1	57.1	59.6	59.6	59.0	52.3	47.3
Places of 250,000 or more	51.4	51.4	59.4	59.4	62.0	62.2	61.8	57.0	52.1
Places of 100,000 or more	55.8	55.8	63.5	63.5	66.3	66.8	65.6	62.0	55.9
Places of 50,000 or more	60.2	59.0	66.6	66.6	69.6	70.2	69.1	65.3	58.8
Places of 25,000 or more	65.4	62.8	70.1	70.4	72.3	73.1	72.8	69.5	61.3
Places of 10,000 or more	73.4	68.0	75.3	75.5	78.1	78.9	78.0	74.3	67.6
Places of 5,000 or more	76.8	70.9	78.2	78.1	80.6	81.1	80.0	76.1	70.2
Places of 2,500 or more	79.3	72.8	80.6	80.3	82.8	83.6	82.7	78.9	72.9

[1] Revised since publication of 1950 reports.

[fol. 32 1]

32 2

Table 4.—POPULATION IN INCORPORATED AND UNINCORPORATED PLACES ACCORDING TO SIZE: 1960

Size of place and urban-rural classification	All places		Incorporated places		Unincorporated places	
	Number	Population	Number	Population	Number	Population
Total	747	13,774,824	612	12,469,647	135	1,305,177
500,000 or more	2	8,314,743	2	8,314,743	...	...
250,000 to 500,000	1	318,611	1	318,611	...	...
100,000 to 250,000	5	739,202	5	739,202	...	...
50,000 to 100,000	11	731,882	7	480,068	4	251,814
25,000 to 50,000	26	873,209	17	564,311	9	308,898
20,000 to 25,000	19	420,399	13	286,511	6	133,888
10,000 to 20,000	63	928,202	38	569,815	25	358,387
5,000 to 10,000	83	569,563	71	482,904	12	86,659
2,500 to 5,000	116	406,219	93	328,506	23	77,713
2,000 to 2,500	46	102,129	35	77,925	11	24,204
1,500 to 2,000	65	114,078	50	87,835	15	26,243
1,000 to 1,500	115	141,455	85	104,084	30	37,371
500 to 1,000	122	89,094	122	89,094	...	...
200 to 500	67	25,374	67	25,374	...	...
Under 200	6	664	6	664	...	...
In urbanized areas	191	11,944,404	150	10,938,106	41	1,006,298
500,000 or more	2	8,314,743	2	8,314,743	...	...
250,000 to 500,000	1	318,611	1	318,611	...	...
100,000 to 250,000	5	739,202	5	739,202	...	...
50,000 to 100,000	11	731,882	7	480,068	4	251,814
25,000 to 50,000	16	533,736	7	224,838	9	308,898
20,000 to 25,000	13	287,550	8	177,100	5	110,450
10,000 to 20,000	43	636,463	20	301,327	23	335,136
In urbanized areas—Con.						
5,000 to 10,000	34	235,410	34	235,410	...	...
2,500 to 5,000	25	90,963	25	90,963	...	...
2,000 to 2,500	7	15,743	7	15,743	...	...
1,500 to 2,000	8	14,477	8	14,477	...	...
1,000 to 1,500	15	18,192	15	18,192	...	...
500 to 1,000	9	6,743	9	6,743	...	...
200 to 500	2	689	2	689	...	...
Under 200	...	...	...	...	...	...
Other urban territory	176	1,413,470	138	1,202,409	38	211,061
25,000 to 50,000	10	339,473	10	339,473	...	...
20,000 to 25,000	6	132,849	5	109,411	1	23,438
10,000 to 20,000	20	291,739	18	268,488	2	23,251
5,000 to 10,000	49	334,153	37	247,494	12	86,659
2,500 to 5,000	91	315,256	68	237,543	23	77,713
Rural territory	380	416,950	324	329,132	56	87,818
2,000 to 2,500	39	86,386	28	62,182	11	24,204
1,500 to 2,000	57	99,601	42	73,358	15	26,243
1,000 to 1,500	100	123,263	70	85,892	30	37,371
500 to 1,000	113	82,351	113	82,351	...	...
200 to 500	65	24,685	65	24,685	...	...
Under 200	6	664	6	664	...	...

Table 5.—POPULATION OF INCORPORATED PLACES OF 10,000 OR MORE FROM EARLIEST CENSUS TO 1960

[Minus sign (-) denotes decrease]

Incorporated place and census year	Population	Increase over preceding census	
		Number	Percent
ALBANY CITY:			
1960	129,726	-5,269	-3.9
1950	134,995	4,418	3.4
1940	130,577	3,165	2.5
1930	127,412	14,068	12.4
1920	113,344	13,091	13.1
1910	100,253	6,102	6.5
1900	94,151	-772	-0.8
1890	94,923	4,165	4.6
1880	90,758	21,336	30.7
1870	69,422	7,055	11.3
1860	62,367	11,604	22.9
1850	50,763	17,042	50.5
1840	33,721	9,512	39.3
1830	24,209	11,979	97.7
1820	12,630	1,868	17.4
1810	10,762	5,473	103.5
1800	5,289	1,791	51.2
1790	3,498	...	...
AMSTERDAM CITY:			
1960	28,772	-3,468	-10.8
1950	32,240	-1,089	-3.3
1940	33,329	-1,488	-4.3
1930	34,817	1,293	3.9
1920	33,524	2,257	7.2
1910	31,267	10,338	49.4
1900	20,929	3,593	20.7
1890	17,336	7,870	83.1
1880	9,466	4,040	74.5
1870	5,426	...	...
AUBURN CITY:			
1960	35,249	-1,473	-4.0
1950	36,722	969	2.7
1940	35,753	-899	-2.5
1930	36,652	460	1.3
1920	36,192	1,324	4.4
1910	34,868	4,323	14.2
1900	30,345	4,487	17.4
1890	25,858	3,934	17.9
1880	21,924	4,699	27.3
1870	17,225	6,239	56.8
1860	10,986	1,438	15.1
BATAVIA CITY:			
1960	18,210	411	2.3
1950	17,799	532	3.1
1940	17,267	-108	-0.6
1930	17,375	3,834	28.3
1920	13,541	1,928	16.6
1910	11,613	2,433	26.5
1900	9,180	1,959	27.1
1890	7,221	2,976	49.0
1880	4,845	955	24.6
1870	3,890	1,330	52.0
1860	2,560	...	...
BEACON CITY:			
1960	13,922	-90	-0.6
1950	14,012	1,440	11.5
1940	12,572	639	5.4
1930	11,933	937	8.5
1920	10,996	...	...
BINGHAMTON CITY:			
1960	75,941	-4,733	-5.9
1950	80,674	2,365	3.0
1940	78,309	1,647	2.1
1930	76,662	9,862	14.8
1920	66,800	18,357	37.9
1910	48,443	8,796	22.2
1900	39,647	4,642	13.3
1890	35,005	17,688	102.1
1880	17,317	4,625	36.4
1870	12,692	4,367	52.5
1860	8,325	...	...
BUFFALO CITY:			
1960	532,759	-47,373	-8.2
1950	580,132	4,231	0.7
1940	575,901	2,825	0.5
1930	573,076	66,301	13.1
1920	506,773	83,060	19.6
1910	423,715	71,328	20.2
1900	352,387	96,723	37.8
1890	255,664	100,530	64.8
1880	155,134	37,420	31.8
1870	117,714	36,585	45.1
1860	81,129	38,804	92.0
CORNING CITY--Con.			
1920	22,987	-1,722	-7.0
1910	24,709	799	3.3
1900	23,910	1,401	6.2
1890	22,509	3,093	15.9
1880	19,416	4,059	26.4
1870	15,357	6,557	74.5
1860	8,800	4,571	108.1
1850	4,229	...	...
CORNING CITY:			
1960	17,085	-599	-3.4
1950	17,684	1,472	9.1
1940	16,212	435	2.8
1930	15,777	-43	-0.3
1920	15,820	2,090	15.2
1910	13,730	2,669	24.1
1900	11,061	2,511	29.4
1890	8,550	3,748	78.1
1880	4,802	784	19.5
1870	4,018	...	...
CORTLAND CITY:			
1960	19,181	1,329	7.7
1950	18,152	2,271	14.3
1940	15,881	838	5.6
1930	15,043	1,749	13.2
1920	13,294	1,790	15.6
1910	11,504	2,490	27.6
1900	9,014	424	4.9
1890	8,590	4,540	112.1
1880	4,050	984	32.1
1870	3,066	...	...
DEPEW VILLAGE:			
1960	13,380	6,363	88.2
1950	7,217	1,133	18.6
1940	6,084	-452	-6.9
1930	6,536	686	11.7
1920	5,850	1,929	49.2
1910	3,921	542	16.0
1900	3,379	...	...

[fol. 32m]

500 to 1,000	122	89,094	122	89,094	...	...
200 to 500	67	25,374	67	25,374	...	...
Under 200	6	664	6	664	...	...
In urbanized areas	191	11,944,404	150	10,938,106	41	1,006,298
500,000 or more	2	8,314,743	2	8,314,743	...	...
250,000 to 500,000	1	318,611	1	318,611	...	...
100,000 to 250,000	5	739,202	5	739,202	...	...
50,000 to 100,000	11	731,882	7	480,068	4	251,814
25,000 to 50,000	16	533,736	7	224,838	9	308,898
20,000 to 25,000	13	287,550	8	177,100	5	110,450
10,000 to 20,000	43	636,463	20	301,327	23	335,136
25,000 to 50,000	6	132,849	3	109,411	1	23,438
10,000 to 25,000	80	291,739	18	268,488	2	23,251
5,000 to 10,000	49	334,133	37	247,494	12	86,639
2,500 to 5,000	91	313,256	68	239,543	23	77,713
Rural territory	380	416,930	324	329,132	56	87,818
2,000 to 2,500	39	86,386	28	62,182	11	24,204
1,500 to 2,000	57	99,601	42	73,398	15	26,243
1,000 to 1,500	100	123,263	70	85,892	30	37,371
500 to 1,000	113	82,351	113	82,351	...	...
200 to 500	65	24,685	65	24,685	...	...
Under 200	6	664	6	664	...	...

Table 5.—POPULATION OF INCORPORATED PLACES OF 10,000 OR MORE FROM EARLIEST CENSUS TO 1960

[Minus sign (-) denotes decrease]

Incorporated place and census year	Population	Increase over preceding census	
		Number	Percent
ALBANY CITY:			
1960	129,726	-9,269	-3.9
1950	134,995	4,418	3.4
1940	130,577	3,165	2.5
1930	127,412	14,068	12.4
1920	113,344	13,091	13.1
1910	100,253	6,102	6.5
1900	94,151	-772	-0.8
1890	94,923	4,165	4.6
1880	90,758	21,336	30.7
1870	69,422	7,055	11.3
1860	62,367	11,604	22.9
1850	50,763	17,042	50.5
1840	33,721	9,512	39.3
1830	24,209	11,579	91.7
1820	12,630	1,868	17.4
1810	10,762	5,473	103.5
1800	5,289	1,791	51.2
1790	3,498	...	...
AMSTERDAM CITY:			
1960	28,772	-3,468	-10.8
1950	32,240	-1,089	-3.3
1940	33,329	-1,488	-4.3
1930	34,817	1,293	3.9
1920	33,524	2,297	7.2
1910	31,267	10,338	49.4
1900	20,929	3,593	20.7
1890	17,336	7,870	83.1
1880	9,466	4,040	74.5
1870	5,426	...	...
AUBURN CITY:			
1960	35,249	-1,473	-4.0
1950	36,722	969	2.7
1940	35,753	-899	-2.5
1930	36,652	460	1.3
1920	36,192	1,524	4.4
1910	34,668	4,323	14.2
1900	30,345	4,487	17.4
1890	25,858	3,934	17.9
1880	21,924	4,699	27.3
1870	17,225	6,239	56.8
1860	10,986	1,438	15.1
1850	9,548	3,922	69.7
1840	5,626	...	...
BABYLON TOWN:			
1960	11,062	5,047	83.9
1950	6,015	1,273	26.8
1940	4,742	400	9.2
1930	4,342	1,819	72.1
1920	2,523	-77	-3.0
1910	2,600	443	20.5
1900	2,157	...	...
BATAVIA CITY:			
1960	18,210	411	2.3
1950	17,799	532	3.1
1940	17,267	-108	-0.6
1930	17,375	3,834	28.3
1920	13,541	1,928	16.6
1910	11,613	2,433	26.5
1900	9,180	1,959	27.1
1890	7,221	2,376	49.0
1880	4,845	955	24.6
1870	3,890	1,330	52.0
1860	2,560	...	...
BEACON CITY:			
1960	13,922	-90	-0.6
1950	14,012	1,440	11.5
1940	12,572	639	5.4
1930	11,933	937	8.5
1920	10,996	...	...
BINGHAMTON CITY:			
1960	75,941	-4,733	-5.9
1950	80,674	2,369	3.0
1940	78,309	1,647	2.1
1930	76,662	9,862	14.8
1920	66,800	18,357	37.9
1910	48,443	8,796	22.2
1900	39,647	4,642	13.3
1890	35,005	17,688	102.1
1880	17,317	4,625	36.4
1870	12,692	4,367	52.5
1860	8,325	...	...
BUFFALO CITY:			
1960	532,759	-47,373	-8.2
1950	580,132	4,231	0.7
1940	575,901	2,825	0.5
1930	573,076	66,301	13.1
1920	506,775	83,060	19.6
1910	423,715	71,328	20.2
1900	352,387	96,723	37.8
1890	255,664	100,530	64.8
1880	155,134	37,420	31.8
1870	117,714	36,585	45.1
1860	81,129	38,868	92.0
1850	42,261	24,048	132.0
1840	18,213	9,545	110.1
1830	8,668	6,573	313.7
1820	2,095	587	38.9
1810	1,508	...	...
COHOES CITY:			
1960	20,129	-1,143	-5.4
1950	21,272	-683	-3.1
1940	21,955	-1,271	-5.5
1930	23,226	239	1.0
COHOES CITY—Con.			
1920	22,987	-1,722	-7.0
1910	24,709	709	3.0
1900	23,910	1,401	6.2
1890	22,509	3,093	15.9
1880	19,416	4,059	26.4
1870	15,357	6,357	74.5
1860	8,800	4,772	108.1
1850	4,229	...	...
CORNING CITY:			
1960	17,085	-599	-3.4
1950	17,684	1,472	9.1
1940	16,212	435	2.8
1930	15,777	-43	-0.3
1920	15,820	2,080	15.2
1910	13,730	2,669	24.1
1900	11,061	2,511	29.4
1890	8,550	3,748	78.1
1880	4,802	784	19.5
1870	4,018	...	...
CORTLAND CITY:			
1960	19,181	1,029	5.7
1950	18,152	2,271	14.3
1940	15,881	838	5.6
1930	15,043	1,749	13.2
1920	13,294	1,780	15.6
1910	11,506	2,490	27.6
1900	9,014	424	4.9
1890	8,590	4,540	112.1
1880	4,050	984	32.1
1870	3,066	...	...
DEPEW VILLAGE:			
1960	13,380	6,363	88.2
1950	7,237	1,133	18.6
1940	6,084	-452	-6.9
1930	6,536	686	11.7
1920	5,850	1,929	49.2
1910	3,921	542	16.0
1900	3,379	...	...
DUNKIRK CITY:			
1960	18,205	198	1.1
1950	18,007	294	1.7
1940	17,713	-89	-0.5
1930	17,802	-1,534	-7.9
1920	19,336	2,118	12.3
1910	17,221	5,605	48.3
1900	11,616	2,200	23.4
1890	9,416	2,168	29.9
1880	7,248	2,017	38.6
1870	5,231	...	...

[fol. 32m]

32m

Table 5.—POPULATION OF INCORPORATED PLACES OF 10,000 OR MORE FROM EARLIEST CENSUS TO 1960—Con.

[Minus sign (–) denotes decrease]

Incorporated place and census year	Population	Increase over preceding census	
		Number	Percent
EAST ROCKAWAY CITY:			
1960	10,721	2,751	34.5
1950	7,970	2,360	42.1
1940	5,610	1,270	29.3
1930	4,340	2,335	116.5
1920	2,005	805	67.1
1910	1,200	461	62.4
1900	739	...	...
ELMIRA CITY:			
1960	46,317	-3,199	-6.4
1950	49,716	4,610	10.2
1940	45,106	-2,291	-4.8
1930	47,397	2,004	4.4
1920	45,393	8,217	22.1
1910	37,176	1,504	4.2
1900	35,672	4,779	15.5
1890	30,893	10,352	50.4
1880	20,541	4,678	29.5
1870	15,863	...	...
ENDICOTT VILLAGE: [1]			
1960	18,778	-1,275	-6.4
1950	20,050	2,348	13.3
1940	17,702	1,471	9.1
1930	16,231	6,731	70.9
1920	9,500	7,092	294.5
1910	2,408	...	...
FLORAL PARK VILLAGE:			
1960	17,499	2,917	20.0
1950	14,582	1,632	12.6
1940	12,950	2,934	29.3
1930	10,016	7,919	377.6
1920	2,097	872	71.2
1910	1,225	...	...
FREEPORT VILLAGE:			
1960	34,419	9,739	39.5
1950	24,680	4,270	20.9
1940	20,410	4,943	32.0
1930	15,467	6,868	79.9
1920	8,599	3,763	77.8
1910	4,836	2,224	85.1
1900	2,612	...	...
FULTON CITY: [2]			
1960	14,261	339	2.4
1950	13,922	560	4.2
1940	13,362	900	7.2
1930	12,462	-581	-4.5
1920	13,043	2,563	24.5
1910	10,480	5,199	98.4
1900	5,281	1,067	25.3
1890	4,214	273	6.9
1880	3,941	434	12.4
1870	3,507	...	...
GARDEN CITY VILLAGE:			
1960	23,948	9,482	65.3
1950	14,486	3,483	29.1
1940	11,223	4,043	56.3
1930	7,180	4,780	196.7
1920	2,420	...	...
GENEVA CITY:			
1960	17,286	142	0.8
1950	17,144	1,589	10.2
1940	15,555	-498	-3.1
1930	16,053	1,405	9.6
1920	14,648	2,202	17.7
1910	12,446	2,013	19.3
1900	10,433	2,876	38.1
1890	7,557	1,679	28.6
1880	5,878	357	6.5
1870	5,521	...	...
GLEN COVE CITY:			
1960	13,817	8,687	97.4
1950	15,130	2,715	21.9
1940	12,415	983	8.6
1930	11,430	2,766	31.9
1920	8,664	...	...
GLENS FALLS CITY:			
GLOVERSVILLE CITY:			
1960	21,741	-1,893	-8.0
1950	23,634	305	1.3
1940	23,329	230	1.0
1930	23,099	1,024	4.6
1920	22,075	1,433	6.9
1910	20,642	2,293	12.5
1900	18,349	4,485	32.3
1890	13,864	6,731	94.4
1880	7,133	2,615	57.9
1870	4,518	...	...
GREAT NECK VILLAGE:			
1960	10,171	2,412	31.1
1950	7,759	1,392	25.8
1940	6,167	2,157	53.8
1930	4,010	...	...
HEMPSTEAD VILLAGE:			
1960	34,641	5,506	18.9
1950	29,135	8,279	39.7
1940	20,856	8,206	64.9
1930	12,650	6,268	98.2
1920	6,382	1,418	28.6
1910	4,964	1,382	38.6
1900	3,582	1,249	25.9
1890	4,831	2,310	91.6
1880	2,521	205	8.9
1870	2,316	...	...
HORNELL CITY:			
1960	13,907	-1,142	-7.6
1950	15,049	-600	-3.8
1940	15,649	-601	-3.7
1930	16,250	1,225	8.2
1920	15,025	1,408	10.3
1910	13,617	1,699	14.3
1900	11,918	922	8.4
1890	10,996	2,801	34.2
1880	8,195	3,643	80.0
1870	4,552	...	...
HUDSON CITY:			
1960	11,075	-554	-4.8
1950	11,629	112	1.0
1940	11,517	-820	-6.6
1930	12,337	592	5.0
1920	11,745	328	2.9
1910	11,417	1,889	19.8
1900	9,528	-442	-4.4
1890	9,970	1,300	15.0
1880	8,670	55	0.6
1870	8,615	1,428	19.9
1860	7,187	901	14.3
1850	6,286	614	10.8
1840	5,672	280	5.2
1830	5,392	82	1.5
1820	5,310	1,262	31.2
1810	4,048	384	10.5
1800	3,664	1,080	41.8
1790	2,584	...	...
ILION VILLAGE:			
1960	10,199	836	8.9
1950	9,363	436	4.9
1940	8,927	-963	-9.7
1930	9,890	-279	-2.7
1920	10,169	3,581	54.4
1910	6,588	1,450	28.2
1900	5,138	1,081	26.6
1890	4,057	346	9.3
1880	3,711	835	29.0
1870	2,876	...	...
ITHACA CITY:			
1960	28,799	-458	-1.6
1950	29,257	9,527	48.3
1940	19,730	-978	-4.7
1930	20,708	3,704	21.8
1920	17,004	2,202	14.9
1910	14,802	1,666	12.7
1900	13,136	2,057	18.6
1890	11,079	1,974	21.7
1880	9,105	643	7.6
1870	8,462	...	...
JOHNSON CITY VILLAGE:			
1960	19,118	-131	-0.7
1950	19,249	1,210	6.7
1940	18,039	4,472	33.0
1930	13,567	4,980	58.0
1920	8,587	4,812	127.5
1910	3,775	664	21.3
1900	3,111	...	...
JOHNSTOWN CITY:			
1960	10,390	-533	-4.9
1950	10,923	257	2.4
1940	10,666	-135	-1.2
1930	10,801	-107	-1.0
1920	10,908	461	4.4
1910	10,447	317	3.1
1900	10,130	2,362	30.4
1890	7,768	2,755	55.0
1880	5,813	1,731	52.7
1870	3,282	...	...
KENMORE VILLAGE:			
1960	21,261	1,195	6.0
1950	20,066	1,454	7.8
1940	18,612	2,130	12.9
1930	16,482	13,322	421.6
1920	3,160	2,140	209.8
1910	1,020	702	220.8
1900	318	...	...
KINGSTON CITY:			
1960	29,260	443	1.5
1950	28,817	228	0.8
1940	28,589	501	1.8
1930	28,088	1,400	5.2
1920	26,688	780	3.0
1910	25,908	1,373	5.6
1900	24,535	3,274	15.4
1890	21,261	2,917	15.9
1880	18,344	12,029	190.3
1870	6,315	...	...
LACKAWANNA CITY:			
1960	29,564	1,906	6.9
1950	27,658	3,600	15.0
1940	24,058	110	0.5
1930	23,948	6,030	33.7
1920	17,918	3,369	23.2
1910	14,549	...	...
LANCASTER VILLAGE:			
1960	12,254	3,589	41.4
1950	8,665	1,429	19.7
1940	7,236	196	2.8
1930	7,040	981	16.2
1920	6,059	1,695	38.8
1910	4,364	614	16.4
1900	3,750	2,058	121.6
1890	1,692	90	5.6
1880	1,602	-95	-5.6
1870	1,697	-9	-0.5
1860	1,706	...	...
LINDENHURST VILLAGE:			
1960	30,905	12,261	141.8
1950	8,644	3,888	81.7
1940	4,756	716	17.7
1930	4,040	...	...
LOCKPORT CITY:			
1960	26,443	1,310	5.2
1950	25,133	754	3.1
1940	24,379	1,219	5.3
1930	23,160	1,852	8.7
1920	21,308	3,338	18.6
1910	17,970	1,389	8.4
1900	16,581	543	3.4
1890	16,038	2,516	18.6
1880	13,522	1,096	8.8
1870	12,426	1,555	14.3
1860	10,871	...	...
LONG BEACH CITY:			
1960	26,473	10,887	69.9

[fol. 32n]

1950	46,317	-3,199	-6.4
1930	49,716	4,610	10.2
1940	45,106	-2,291	-4.8
1930	47,397	2,004	4.4
1920	45,393	8,217	22.1
1910	37,176	1,504	4.2
1900	35,672	4,779	15.5
1890	30,893	10,352	50.4
1880	20,541	4,678	29.5
1870	15,863	...	...
ENDICOTT VILLAGE:[1]			
1960	18,775	-1,275	-6.4
1950	20,050	2,348	13.3
1940	17,702	1,471	9.1
1930	16,231	6,731	70.9
1920	9,500	7,092	294.5
1910	2,408	...	...
FLORAL PARK VILLAGE:			
1960	17,499	2,917	20.0
1950	14,582	1,632	12.6
1940	12,950	2,934	29.3
1930	10,016	7,819	377.6
1920	2,097	872	71.2
1910	1,225	...	...
FREEPORT VILLAGE:			
1960	34,419	9,739	39.5
1950	24,680	4,270	20.9
1940	20,410	4,943	32.0
1930	15,467	6,868	79.9
1920	8,599	1,763	77.8
1910	4,836	2,224	85.1
1900	2,612	...	...
FULTON CITY:[2]			
1960	14,261	339	2.4
1950	13,922	560	4.2
1940	13,362	900	7.2
1930	12,462	-581	-4.5
1920	13,043	2,563	24.5
1910	10,480	5,199	98.4
1900	5,281	1,067	25.3
1890	4,214	273	6.9
1880	3,941	434	12.4
1870	3,507	...	...
GARDEN CITY VILLAGE:			
1960	23,943	9,462	65.3
1950	14,486	3,283	29.1
1940	11,223	4,043	56.3
1930	7,180	4,760	196.7
1920	2,420	...	...
GENEVA CITY:			
1960	17,286	142	0.8
1950	17,144	1,589	10.2
1940	15,555	-498	-3.1
1930	16,053	1,405	9.6
1920	14,648	2,202	17.7
1910	12,446	2,013	19.3
1900	10,433	2,876	38.1
1890	7,557	1,679	28.6
1880	5,878	357	6.5
1870	5,521	...	...
GLEN COVE CITY:			
1960	23,817	8,687	57.4
1950	15,130	2,715	21.9
1940	12,415	985	8.6
1930	11,430	2,766	31.9
1920	8,664	...	...
GLENS FALLS CITY:			
1960	18,580	-1,030	-5.3
1950	19,610	774	4.1
1940	18,836	305	1.6
1930	18,531	1,893	11.4
1920	16,638	1,395	9.2
1910	15,243	2,630	20.9
1900	12,613	3,104	32.6
1890	9,509	4,609	94.1
1880	4,900	400	8.9
1870	4,500	720	19.0
1860	3,780	1,063	39.1
1850	2,717	...	...
1870	4,518	...	...
GREAT NECK VILLAGE:			
1960	10,171	2,412	31.1
1950	7,759	1,592	25.8
1940	6,167	2,157	53.8
1930	4,010	...	...
HEMPSTEAD VILLAGE:			
1960	34,641	5,506	18.9
1950	29,135	8,279	39.7
1940	20,856	8,206	64.9
1930	12,650	6,268	98.2
1920	6,382	1,418	28.6
1910	4,964	1,382	38.6
1900	3,582	1,269	-25.9
1890	4,831	2,310	91.6
1880	2,521	205	8.9
1870	2,316	...	...
HORNELL CITY:			
1960	13,907	-1,142	-7.6
1950	15,049	-600	-3.8
1940	15,649	-601	-3.7
1930	16,250	1,225	8.2
1920	15,025	1,408	10.3
1910	13,617	1,699	14.3
1900	11,918	922	8.4
1890	10,996	2,801	34.2
1880	8,195	3,643	80.0
1870	4,552	...	...
HUDSON CITY:			
1960	11,075	-554	-4.8
1950	11,629	112	1.0
1940	11,517	-820	-6.6
1930	12,337	592	5.0
1920	11,745	328	2.9
1910	11,417	1,889	19.8
1900	9,528	-442	-4.4
1890	9,970	1,300	15.0
1880	8,670	55	0.6
1870	8,615	1,428	19.9
1860	7,187	901	14.3
1850	6,286	614	10.8
1840	5,672	280	5.2
1830	5,392	82	1.5
1820	5,310	1,262	31.2
1810	4,048	384	10.5
1800	3,664	1,080	41.8
1790	2,584	...	...
ILION VILLAGE:			
1960	10,199	836	8.9
1950	9,363	436	4.9
1940	8,927	-963	-9.7
1930	9,890	-279	-2.7
1920	10,169	3,581	54.4
1910	6,588	1,450	28.2
1900	5,138	1,081	26.6
1890	4,057	346	9.3
1880	3,711	835	29.0
1870	2,876	...	...
ITHACA CITY:			
1960	28,799	-458	-1.6
1950	29,257	9,527	48.3
1940	19,730	-978	-4.7
1930	20,708	3,704	21.8
1920	17,004	2,202	14.9
1910	14,802	1,666	12.7
1900	13,136	2,057	18.6
1890	11,079	1,974	21.7
1880	9,105	643	7.6
1870	8,462	...	...
JAMESTOWN CITY:			
1960	41,818	-1,536	-3.5
1950	43,354	716	1.7
1940	42,638	-2,517	-5.6
1930	45,155	6,238	16.0
1920	38,917	7,620	24.3
1910	31,297	8,405	36.7
1900	22,892	6,854	42.7
1890	16,038	6,681	71.4
1880	9,357	4,021	75.4
1870	5,336	2,181	69.1
1860	3,155	...	...
JOHNSTOWN CITY:			
1960	10,390	-533	-4.9
1950	10,923	257	2.4
1940	10,666	-135	-1.2
1930	10,801	-107	-1.0
1920	10,908	461	4.4
1910	10,447	317	3.1
1900	10,130	2,362	30.4
1890	7,768	2,755	55.0
1880	5,013	1,731	52.7
1870	3,282	...	...
KENMORE VILLAGE:			
1960	21,261	1,195	6.0
1950	20,066	1,454	7.8
1940	18,612	2,130	12.9
1930	16,482	13,322	421.6
1920	3,160	2,140	209.8
1910	1,020	702	220.8
1900	318	...	...
KINGSTON CITY:			
1960	29,260	443	1.5
1950	28,817	228	0.8
1940	28,589	501	1.8
1930	28,088	1,400	5.2
1920	26,688	780	3.0
1910	25,908	1,373	5.6
1900	24,535	3,274	15.4
1890	21,261	2,917	15.9
1880	18,343	12,029	190.5
1870	6,315	...	...
LACKAWANNA CITY:			
1960	29,564	1,906	6.9
1950	27,658	3,600	15.0
1940	24,058	110	0.5
1930	23,948	6,030	33.7
1920	17,918	3,369	23.2
1910	14,549	...	...
LANCASTER VILLAGE:			
1960	12,254	3,589	41.4
1950	8,665	1,429	19.7
1940	7,236	196	2.8
1930	7,040	981	16.2
1920	6,059	1,695	38.8
1910	4,364	614	16.4
1900	3,750	2,058	121.6
1890	1,692	90	5.6
1880	1,602	-95	-5.6
1870	1,697	-9	-0.5
1860	1,706	...	...
LINDENHURST VILLAGE:			
1960	20,905	8,261	141.8
1950	8,644	3,888	81.7
1940	4,756	716	17.7
1930	4,040	...	...
LOCKPORT CITY:			
1960	26,443	1,310	5.2
1950	25,133	754	3.1
1940	24,379	1,219	5.3
1930	23,160	1,852	8.7
1920	21,308	3,338	18.6
1910	17,970	1,389	8.4
1900	16,581	543	3.4
1890	16,038	2,516	18.6
1880	13,522	1,096	8.8
1870	12,426	1,555	14.3
1860	10,871	...	...
LONG BEACH CITY:			
1960	26,473	10,887	69.9
1950	15,586	6,550	72.5
1940	9,036	3,219	55.3
1930	5,817	5,535	1,962.8
1920	282	...	...
LYNBROOK VILLAGE:			
1960	19,881	2,567	14.8
1950	17,314	2,757	18.9
1940	14,557	2,564	21.4
1930	11,993	7,622	174.4
1920	4,371	...	...

[1] Union and Endicott villages consolidated as Endicott village in 1921. Combined figures for 1920, 12,803; for 1910, 3,952.

[2] Fulton and Oswego Falls villages consolidated as Fulton city in 1902. Combined population for 1900 and prior census years is as follows: 1900, 8,206; 1890, 6,035; 1880, 5,772; 1870, 4,626.

[3] Estimated.

[fol. 32n]

32 n

Table 5.—POPULATION OF INCORPORATED PLACES OF 10,000 OR MORE FROM EARLIEST CENSUS TO 1960—Con.

[Minus sign (-) denotes decrease]

Incorporated place and census year	Population	Increase over preceding census	
		Number	Percent
HAMMONDS VILLAGE:			
1960	17,673	2,657	17.7
1950	15,016	1,982	15.2
1940	13,034	1,268	10.8
1930	11,766	5,195	79.1
1920	6,571	872	15.3
1910	5,699	...	...
HASBROUCK PARK VILLAGE:			
1960	19,904	17,970	732.8
1950	2,334	1,846	378.3
1940	488	...	...
HASTINGS VILLAGE:			
1960	13,478	2,341	17.8
1950	11,137	1,809	16.0
1940	11,328	691	6.5
1930	10,637	4,644	77.5
1920	5,993	3,042	103.1
1910	2,951	919	45.2
1900	2,032	983	93.7
1890	1,049	...	...
1880	(1)	...	...
1870	483	...	...
HAVERSTRAW CITY:			
1960	23,475	889	3.9
1950	22,586	678	3.1
1940	21,908	632	3.0
1930	21,276	2,856	15.5
1920	18,420	3,107	20.3
1910	15,313	791	5.4
1900	14,522	2,545	21.2
1890	11,977	3,483	41.0
1880	8,494	2,445	40.4
1870	6,049	...	...
HEMPSTEAD VILLAGE:			
1960	39,519	9,688	38.4
1950	14,831	4,767	47.4
1940	10,064	1,909	23.4
1930	8,155	5,139	170.4
1920	3,016	1,035	52.2
1910	1,981	...	...
HENDERSON CITY:			
1960	30,979	-977	-3.1
1950	31,956	73	0.2
1940	31,883	608	1.9
1930	31,275	909	3.0
1920	30,366	2,561	9.2
1910	27,805	2,862	11.5
1900	24,943	1,856	8.0
1890	23,087	5,038	27.9
1880	18,049	1,035	6.1
1870	17,014	4,436	35.3
1860	[2]12,578	...	...
HIGH HILL PARK VILLAGE:			
[illegible]	[illegible]	3,450	[illegible]
HORNELL CITY:			
1960	13,242	-1,258	-8.7
1950	14,500	1,500	11.5
1940	13,000	1,000	8.3
1930	12,000	1,000	9.1
1920	11,000	1,000	10.0
1910	10,000	1,000	11.1
1900	9,000	1,000	12.5
1890	8,000	1,000	14.3
1880	7,000	1,000	16.7
1870	6,000	...	...
HUDSON CITY:			
1960	12,210	-1,290	-9.6
1950	13,500	1,500	12.5
1940	12,000	1,000	9.1
1930	11,000	1,000	10.0
1920	10,000	1,000	11.1
1910	9,000	1,000	12.5
1900	8,000	1,000	14.3
1890	7,000	1,000	16.7
1880	6,000	...	...
HUNTINGTON VILLAGE:			
1960	12,866	2,573	25.0
1950	10,293	649	6.7
1940	9,644	1,997	26.1
1930	7,649	685	9.8
1920	6,964	737	11.8
1910	6,227	1,649	36.0
1900	4,578	880	23.8
1890	3,698	1,248	50.9
1880	2,450	202	9.0
1870	2,248	...	...
IRONDEQUOIT TOWN:			
1960	30,979	-977	-3.1
1950	31,956	73	0.2
1940	31,883	608	1.9
1930	31,275	909	3.0
1920	30,366	2,561	9.2
1910	27,805	2,862	11.5
1900	24,943	1,856	8.0
1890	23,087	5,038	27.9
1880	18,049	1,035	6.1
1870	17,014	4,436	35.3
1860	[2]12,578	...	...
IRVINGTON VILLAGE:			
1960	6,074	-1,126	-15.6
1950	7,200	1,200	20.0
1940	6,000	1,000	20.0
1930	5,000	1,000	25.0
1920	4,000	1,000	33.3
1910	3,000	1,000	50.0
1900	2,000	1,000	100.0
1890	1,000	...	...
ITHACA CITY:			
1960	28,732	1,732	6.4
1950	27,000	1,000	3.8
1940	26,000	1,000	4.0
1930	25,000	1,000	4.2
1920	24,000	1,000	4.3
1910	23,000	1,000	4.5
1900	22,000	1,000	4.8
1890	21,000	1,000	5.0
1880	20,000	1,000	5.3
1870	19,000	...	...
JAMESTOWN CITY:			
1960	39,475	-1,525	-3.7
1950	41,000	1,000	2.5
1940	40,000	1,000	2.6
1930	39,000	1,000	2.7
1920	38,000	1,000	2.8
1910	37,000	1,000	2.9
1900	36,000	1,000	3.0
1890	35,000	1,000	3.1
1880	34,000	1,000	3.2
1870	33,000	...	...
JOHNSON CITY:			
1960	17,126	-1,874	-9.9
1950	19,000	1,000	5.6
1940	18,000	1,000	5.9
1930	17,000	1,000	6.3
1920	16,000	1,000	6.7
1910	15,000	1,000	7.1
1900	14,000	1,000	7.7
1890	13,000	1,000	8.3
1880	12,000	1,000	9.1
1870	11,000	...	...
KINGSTON CITY:			
1960	28,063	-1,937	-6.5
1950	30,000	1,000	3.4
1940	29,000	1,000	3.6
1930	28,000	1,000	3.7
1920	27,000	1,000	3.8
1910	26,000	1,000	4.0
1900	25,000	1,000	4.2
1890	24,000	1,000	4.3
1880	23,000	1,000	4.5
1870	22,000	...	...
LACKAWANNA CITY:			
1960	29,564	-1,436	-4.6
1950	31,000	1,000	3.3
1940	30,000	1,000	3.4
1930	29,000	1,000	3.6
1920	28,000	1,000	3.7
1910	27,000	1,000	3.8
1900	26,000	1,000	4.0
1890	25,000	1,000	4.2
1880	24,000	1,000	4.3
1870	23,000	...	...
LACKAWANNA VILLAGE:			
1960	22,000	-1,000	-4.3
1950	23,000	1,000	4.5
1940	22,000	1,000	4.8
1930	21,000	1,000	5.0
1920	20,000	1,000	5.3
1910	19,000	1,000	5.6
1900	18,000	1,000	6.0
1890	17,000	1,000	6.3
1880	16,000	1,000	6.7
1870	15,000	...	...
LANCASTER VILLAGE:			
1960	10,000	-1,000	-9.1
1950	11,000	1,000	10.0
1940	10,000	1,000	11.1
1930	9,000	1,000	12.5
1920	8,000	1,000	14.3
1910	7,000	1,000	16.7
1900	6,000	1,000	20.0
1890	5,000	1,000	25.0
1880	4,000	1,000	33.3
1870	3,000	...	...
LARCHMONT VILLAGE:			
1960	6,074	-1,126	-15.6
1950	7,200	1,200	20.0
1940	6,000	1,000	20.0
1930	5,000	1,000	25.0
1920	4,000	1,000	33.3
1910	3,000	1,000	50.0
1900	2,000	1,000	100.0
1890	1,000	...	...
LEVITTOWN TOWN:			
1960	57,878	57,878	...
1950	...	...	...
LEWISTON VILLAGE:			
1960	3,000	1,000	50.0
1950	2,000	1,000	100.0
1940	1,000	...	...
LIBERTY VILLAGE:			
1960	4,000	1,000	33.3
1950	3,000	1,000	50.0
1940	2,000	1,000	100.0
1930	1,000	...	...
LITTLE FALLS CITY:			
1960	7,000	1,000	16.7
1950	6,000	1,000	20.0
1940	5,000	1,000	25.0
1930	4,000	1,000	33.3
1920	3,000	1,000	50.0
1910	2,000	1,000	100.0
1900	1,000	...	...
LOCKPORT CITY:			
1960	26,000	1,000	4.0
1950	25,000	1,000	4.2
1940	24,000	1,000	4.3
1930	23,000	1,000	4.5
1920	22,000	1,000	4.8
1910	21,000	1,000	5.0
1900	20,000	1,000	5.3
1890	19,000	1,000	5.6
1880	18,000	1,000	6.0
1870	17,000	...	...
LONG BEACH CITY:			
1960	33,000	1,000	3.1
1950	32,000	1,000	3.2
1940	31,000	1,000	3.3
1930	30,000	1,000	3.4
1920	29,000	1,000	3.6
1910	28,000	1,000	3.7
1900	27,000	1,000	3.8
1890	26,000	1,000	4.0
1880	25,000	1,000	4.2
1870	24,000	...	...
LOUDONVILLE VILLAGE:			
1960	5,000	1,000	25.0
1950	4,000	1,000	33.3
1940	3,000	1,000	50.0
1930	2,000	1,000	100.0
1920	1,000	...	...
LYNBROOK VILLAGE:			
1960	19,000	1,000	5.6
1950	18,000	1,000	5.9
1940	17,000	1,000	6.3
1930	16,000	1,000	6.7
1920	15,000	1,000	7.1
1910	14,000	1,000	7.7
1900	13,000	1,000	8.3
1890	12,000	1,000	9.1
1880	11,000	1,000	10.0
1870	10,000	...	...
MALONE VILLAGE:			
1960	10,000	1,000	11.1
1950	9,000	1,000	12.5
1940	8,000	1,000	14.3
1930	7,000	1,000	16.7
1920	6,000	1,000	20.0
1910	5,000	1,000	25.0
1900	4,000	1,000	33.3
1890	3,000	1,000	50.0
1880	2,000	1,000	100.0
1870	1,000	...	...
MAMARONECK VILLAGE:			
1960	17,673	2,657	17.7
1950	15,016	1,982	15.2
1940	13,034	1,268	10.8
1930	11,766	5,195	79.1
1920	6,571	872	15.3
1910	5,699	...	...
MASSAPEQUA PARK VILLAGE:			
1960	19,904	17,970	732.8
1950	2,334	1,846	378.3
1940	488	...	...
MASSENA VILLAGE:			
1960	13,478	2,341	17.8
1950	11,137	1,809	16.0
1940	11,328	691	6.5
1930	10,637	4,644	77.5
1920	5,993	3,042	103.1
1910	2,951	919	45.2
1900	2,032	983	93.7
1890	1,049	...	...
1880	(1)	...	...
1870	483	...	...
MIDDLETOWN CITY:			
1960	23,475	889	3.9
1950	22,586	678	3.1
1940	21,908	632	3.0
1930	21,276	2,856	15.5
1920	18,420	3,107	20.3
1910	15,313	791	5.4
1900	14,522	2,545	21.2
1890	11,977	3,483	41.0
1880	8,494	2,445	40.4
1870	6,049	...	...
MINEOLA VILLAGE:			
1960	20,519	5,688	38.4
1950	14,831	4,767	47.4
1940	10,064	1,909	23.4
1930	8,155	5,139	170.4
1920	3,016	1,035	52.2
1910	1,981	...	...
MOUNT VERNON CITY:			
1960	76,010	4,111	5.7
1950	71,899	4,337	6.7
1940	67,362	5,863	9.5
1930	61,499	18,773	43.9
1920	42,726	11,807	38.2
1910	30,919	9,691	45.7
1900	21,228	10,398	96.0
1890	10,830	6,244	136.2
1880	4,586	1,886	69.9
1870	2,700	...	...
NEWARK VILLAGE:			
1960	12,866	2,573	25.0
1950	10,293	649	6.7
1940	9,644	1,997	26.1
1930	7,649	685	9.8
1920	6,964	737	11.8
1910	6,227	1,649	36.0
1900	4,578	880	23.8
1890	3,698	1,248	50.9
1880	2,450	202	9.0
1870	2,248	...	...
NEW CITY:			
1960	30,979	-977	-3.1
1950	31,956	73	0.2
1940	31,883	608	1.9
1930	31,275	909	3.0
1920	30,366	2,561	9.2
1910	27,805	2,862	11.5
1900	24,943	1,856	8.0
1890	23,087	5,038	27.9
1880	18,049	1,035	6.1
1870	17,014	4,436	35.3
1860	[2]12,578	...	...
NEW HYDE PARK VILLAGE:			
[illegible]	[illegible]	3,450	[illegible]
NEW ROCHELLE CITY:			
1960	76,812	1,812	2.4
1950	75,000	1,000	1.4
1940	74,000	1,000	1.4
1930	73,000	1,000	1.4
1920	72,000	1,000	1.4
1910	71,000	1,000	1.4
1900	70,000	1,000	1.4
1890	69,000	1,000	1.4
1880	68,000	1,000	1.5
1870	67,000	...	...
NEW YORK CITY:[3]			
1960	7,781,984	-109,573	-1.4
1950	7,891,957	436,962	5.9
1940	7,454,995	524,549	7.6
1930	6,930,446	1,310,398	23.3
1920	5,620,048	853,165	17.9
1910	4,766,883	1,329,681	38.7
1900	3,437,202	1,921,901	126.8
1890	1,515,301	309,002	25.6
1880	1,206,299	264,007	28.0
1870	942,292	128,623	15.8
1860	813,669	298,122	57.8
1850	515,547	202,837	64.9
1840	312,710	110,121	54.4
1830	202,589	78,883	63.8
1820	123,706	27,333	28.4
1810	96,373	35,838	59.3
1800	60,515	27,384	82.7
1790	33,131	...	...
NIAGARA FALLS CITY:			
1960	102,394	11,322	12.7
1950	90,872	12,843	16.5
1940	78,029	2,569	3.4
1930	75,460	24,700	48.7
1920	50,760	20,315	66.7
1910	30,445	10,988	56.5
1900	19,457	13,955	253.6
1890	5,502	2,182	65.7
1880	3,320	314	10.4
1870	3,006	...	...
NORTH TONAWANDA CITY:			
1960	34,757	10,026	40.5
1950	24,731	4,477	22.1
1940	20,254	1,235	6.5
1930	19,019	3,537	22.8
1920	15,482	3,527	29.5
1910	11,955	2,886	31.8
1900	9,069	4,276	89.2
1890	4,793	3,301	221.2
1880	1,492	...	...
OSSINING VILLAGE:			
1960	16,122	-44	-0.3
1950	16,166	-180	-1.1
1940	16,346	-569	-3.4
1930	16,915	2,306	15.8
1920	14,609	-1,324	-8.3
1910	15,933	3,300	26.1
1900	12,633	971	8.3
1890	11,662	1,321	12.8
1880	10,341	265	2.6
1870	10,076	2,667	36.0
1860	7,409	...	...
OLEAN CITY:			
1960	21,868	-1,016	-4.4
1950	22,884	1,378	6.4
1940	21,506	-284	-1.3
1930	21,790	1,284	6.3
1920	20,506	5,763	39.1
1910	14,743	5,281	55.8
1900	9,462	2,104	28.6
1890	7,358	4,322	142.4
1880	3,036	1,709	128.8
1870	1,327	...	...
ONEIDA CITY:[4]			
1960	11,677	352	3.1
1950	11,325	1,034	10.0
1940	10,291	-267	-2.5
1930	10,558	17	0.2
1920	10,541	2,224	26.7
1910	8,317	1,953	30.7
1900	6,364	281	4.6
1890	6,083	2,149	54.6
1880	3,934	672	20.6
1870	3,262	...	...
ONEONTA CITY:			
1960	13,412	-152	-1.1
1950	13,564	1,833	15.6
1940	11,731	-805	-6.4
OSSINING VILLAGE—Con.			
1900	7,939	-1,413	-15.1
1890	9,352	2,774	42.2
1880	6,578	1,882	40.1
1870	4,696	-649	12.1
1860	5,345	...	...
OSWEGO CITY:			
1960	22,155	-492	-2.2
1950	22,647	585	2.7
1940	22,062	-590	-2.6
1930	22,652	-974	-4.1
1920	23,626	258	1.1
1910	23,368	1,169	5.3
1900	22,199	357	1.6
1890	21,842	726	3.4
1880	21,116	206	1.0
1870	20,910	4,094	24.3
1860	16,816	4,611	37.8
1850	12,205	...	...
PEEKSKILL CITY:			
1960	18,737	1,006	5.7
1950	17,731	420	2.4
1940	17,311	186	1.1
1930	17,125	1,257	7.9
1920	15,868	623	4.1
1910	15,245	4,887	47.2
1900	10,358	682	7.0
1890	9,676	2,783	40.4
1880	6,893	333	5.1
1870	6,560	...	...
PLATTSBURGH CITY:			
1960	20,172	2,434	13.7
1950	17,738	1,387	8.5
1940	16,351	3,002	22.5
1930	13,349	2,440	22.4
1920	10,909	-229	-2.1
1910	11,138	2,704	32.1
1900	8,434	1,424	20.3
1890	7,010	1,765	33.7
1880	5,245	106	2.1
1870	5,139	2,107	69.5
1860	3,032	...	...
PORT CHESTER VILLAGE:			
1960	24,960	990	4.1
1950	23,970	897	3.9
1940	23,073	411	1.8
1930	22,662	6,089	36.7
1920	16,573	3,764	29.4
1910	12,809	5,369	72.2
1900	7,440	2,166	41.1
1890	5,274	2,020	62.1
1880	3,254	-543	-14.3
1870	3,797	...	...
POUGHKEEPSIE CITY:			
1960	38,330	-2,693	-6.6
1950	41,023	545	1.3
1940	40,478	190	0.5
1930	40,288	5,288	15.1
1920	35,000	7,064	25.3
1910	27,936	3,907	16.3
1900	24,029	1,823	8.2
1890	22,206	1,999	9.9
1880	20,207	127	0.6
1870	20,080	5,354	36.4
1860	14,726	3,215	27.9
1850	[2]11,511	...	...
RENSSELAER CITY:			
1960	10,506	-350	-3.2
1950	10,856	88	0.8
1940	10,768	-455	-4.1
1930	11,223	400	3.7
1920	10,823	112	1.0
1910	10,711	3,245	43.5
1900	7,466	165	2.3
1890	7,301	4,006	121.6
1880	3,295	...	...

[fol. 320]

1950	2,134	1,846	378.3
1940	488	...	...
MASSENA VILLAGE:			
1960	13,478	2,341	17.8
1950	11,137	1,809	16.0
1940	11,328	691	6.5
1930	10,637	4,644	77.5
1920	5,993	3,042	103.1
1910	2,951	919	45.2
1900	2,032	983	93.7
1890	1,049	....	...
1880	(1)	...	...
1870	483	...	...
MIDDLETOWN CITY:			
1960	23,475	889	3.9
1950	22,586	678	3.1
1940	21,908	632	3.0
1930	21,276	2,856	15.5
1920	18,420	3,107	20.3
1910	15,313	791	5.4
1900	14,522	2,545	21.2
1890	11,977	3,483	41.0
1880	8,494	2,445	40.4
1870	6,049	...	...
MINEOLA VILLAGE:			
1960	20,919	5,688	38.4
1950	14,831	4,767	47.4
1940	10,064	1,909	23.4
1930	8,155	5,139	170.4
1920	3,016	1,035	52.2
1910	1,981	...	...
MOUNT VERNON CITY:			
1960	78,010	4,111	5.7
1950	73,899	4,537	6.7
1940	67,362	5,863	9.5
1930	61,499	18,773	43.9
1920	42,726	11,807	38.2
1910	30,919	9,691	45.7
1900	21,228	10,398	96.0
1890	10,830	6,244	136.2
1880	4,586	1,886	69.9
1870	2,700	...	...
NEWARK VILLAGE:			
1960	12,868	2,573	25.0
1950	10,293	649	6.7
1940	9,644	1,997	26.1
1930	7,649	685	9.8
1920	6,964	737	11.8
1910	6,227	1,649	36.0
1900	4,578	880	23.8
1890	3,698	1,248	50.9
1880	2,450	202	9.0
1870	2,248	...	...
NEWBURGH CITY:			
1960	30,979	-977	-3.1
1950	31,956	73	0.2
1940	31,883	608	1.9
1930	31,275	909	3.0
1920	30,366	2,561	9.2
1910	27,805	2,862	11.3
1900	24,943	1,836	8.0
1890	23,087	5,038	27.9
1880	18,049	1,035	6.1
1870	17,014	4,436	35.3
1860	[2]12,578	...	...
NEW HYDE PARK VILLAGE:			
1960	10,808	3,459	47.1
1950	7,349	2,658	56.7
1940	4,691	1,377	41.6
1930	3,314	...	...
NEW ROCHELLE CITY:			
1960	76,812	17,087	28.6
1950	59,725	1,317	2.3
1940	58,408	4,408	8.2
1930	54,000	17,787	49.1
1920	36,213	7,346	25.4
1910	28,867	14,147	96.1
1900	14,720	6,503	79.1
1890	8,217	...	...
1880	(1)	...	...
1870	279	...	...
1870	942,292	128,623	15.8
1860	813,669	298,122	57.8
1850	515,547	202,837	64.9
1840	312,710	110,121	54.4
1830	202,589	78,883	63.8
1820	123,706	27,333	28.4
1810	96,373	35,838	59.3
1800	60,515	27,384	82.7
1790	33,131	...	...
NIAGARA FALLS CITY:			
1960	102,394	11,522	12.7
1950	90,872	12,843	16.5
1940	78,029	2,569	3.4
1930	75,460	24,700	48.7
1920	50,760	20,315	66.7
1910	30,445	10,988	56.5
1900	19,457	13,955	253.6
1890	5,502	2,182	65.7
1880	3,320	314	10.4
1870	3,006	...	...
NORTH TONAWANDA CITY:			
1960	34,737	10,026	40.5
1950	24,731	4,477	22.1
1940	20,254	1,235	6.5
1930	19,019	3,337	22.8
1920	15,682	3,327	29.3
1910	11,955	2,886	31.8
1900	9,069	4,276	89.2
1890	4,793	3,301	221.2
1880	1,492	...	...
OSSINING CITY:			
1960	16,122	-44	-0.3
1950	16,166	-180	-1.1
1940	16,346	-569	-3.4
1930	16,915	2,306	15.8
1920	14,609	-1,324	-8.3
1910	15,933	3,300	26.1
1900	12,633	971	8.3
1890	11,662	1,321	12.8
1880	10,341	265	2.6
1870	10,076	2,667	36.0
1860	7,409	...	...
OLEAN CITY:			
1960	21,868	-1,016	-4.4
1950	22,884	1,378	6.4
1940	21,506	-284	-1.3
1930	21,790	1,284	6.3
1920	20,506	5,763	39.1
1910	14,743	5,281	55.8
1900	9,462	2,104	28.6
1890	7,358	4,322	142.4
1880	3,036	1,709	128.8
1870	1,327	...	...
ONEIDA CITY:[4]			
1960	11,677	352	3.1
1950	11,325	1,024	10.0
1940	10,291	-267	-2.5
1930	10,558	17	0.2
1920	10,541	2,224	26.7
1910	8,317	1,953	30.7
1900	6,364	281	4.6
1890	6,083	2,149	54.6
1880	3,934	672	20.6
1870	3,262	...	...
ONEONTA CITY:			
1960	13,412	-132	-1.1
1950	13,544	1,833	15.6
1940	11,731	-805	-6.4
1930	12,536	954	8.2
1920	11,582	2,091	22.0
1910	9,491	2,344	32.8
1900	7,147	875	14.0
1890	6,272	3,270	108.9
1880	3,002	1,941	182.9
1870	1,061	...	...
OSSINING VILLAGE:			
1960	18,662	2,564	15.9
1950	16,098	102	0.6
1940	15,996	755	5.0
1930	15,241	4,502	41.9
1920	10,739	-741	-6.5
1910	11,480	3,541	44.6
1940	28,062	-990	-3.6
1930	28,652	-974	-4.1
1920	23,626	256	1.1
1910	23,368	1,169	5.3
1900	22,199	357	1.6
1890	21,842	726	3.4
1880	21,116	206	1.0
1870	20,910	4,094	24.3
1860	16,816	4,611	37.8
1850	12,205	...	...
PERRYSVILLE CITY:			
1960	18,737	1,006	5.7
1950	17,731	420	2.4
1940	17,311	186	1.1
1930	17,125	1,257	7.9
1920	15,868	623	4.1
1910	15,245	4,887	47.2
1900	10,358	682	7.0
1890	9,676	2,783	40.4
1880	6,893	333	5.1
1870	6,560	...	...
PLATTSBURGH CITY:			
1960	20,172	2,434	13.7
1950	17,738	1,387	8.5
1940	16,351	3,002	22.5
1930	13,349	2,440	22.4
1920	10,909	-229	-2.1
1910	11,138	2,704	32.1
1900	8,434	1,424	20.3
1890	7,010	1,765	33.7
1880	5,245	106	2.1
1870	5,139	2,107	69.5
1860	3,032	...	...
PORT CHESTER VILLAGE:			
1960	24,960	990	4.1
1950	23,970	897	3.9
1940	23,073	411	1.8
1930	22,662	6,089	36.7
1920	16,573	3,764	29.4
1910	12,809	5,369	72.2
1900	7,440	2,166	41.1
1890	5,274	2,020	62.1
1880	3,254	-543	-14.3
1870	3,797	...	...
POUGHKEEPSIE CITY:			
1960	38,330	-2,693	-6.6
1950	41,023	545	1.3
1940	40,478	190	0.5
1930	40,288	5,288	15.1
1920	35,000	7,064	25.3
1910	27,936	3,907	16.3
1900	24,029	1,823	8.2
1890	22,206	1,999	9.9
1880	20,207	127	0.6
1870	20,080	5,354	36.4
1860	14,726	3,215	27.9
1850	[3]11,511	...	...
RENSSELAER CITY:			
1960	10,506	-350	-3.2
1950	10,856	88	0.8
1940	10,768	-455	-4.1
1930	11,223	400	3.7
1920	10,823	112	1.0
1910	10,711	3,343	43.3
1900	7,466	165	2.3
1890	7,301	4,006	121.6
1880	3,295	...	...
ROCHESTER CITY:			
1960	318,611	-13,877	-4.2
1950	332,488	7,513	2.3
1940	324,975	-3,157	-1.0
1930	328,132	32,382	10.9
1920	295,750	77,601	35.6
1910	218,149	55,541	34.2
1900	162,608	28,712	21.4
1890	133,896	44,530	49.8
1880	89,366	26,980	43.2
1870	62,386	14,182	29.4
1860	48,204	11,801	32.4
1850	36,403	16,212	80.3
1840	20,191	10,984	119.3
1830	9,207	...	...

[1] Not returned separately.
[2] Estimated.
[3] Population shown for years prior to 1900 is for New York City only, before the act of consolidation as Greater New York in 1898. For population of the combined area from 1790 to 1890 and population of each borough from 1790 to 1940, see corresponding report for U.S. Summary, table 28.
[4] Population previous to 1910 is that of Oneida village before its consolidation with Oneida town as Oneida city.

328

Table 5.—POPULATION OF INCORPORATED PLACES OF 10,000 OR MORE FROM EARLIEST CENSUS TO 1960—Con.

[Minus sign (–) denotes decrease]

Incorporated place and census year	Population	Increase over preceding census	
		Number	Percent
ROCKVILLE CENTRE VILLAGE:			
1960	26,355	3,993	17.9
1950	22,362	3,749	20.1
1940	18,613	4,895	35.7
1930	13,718	7,456	119.1
1920	6,262	2,395	70.8
1910	3,667	1,783	94.6
1900	1,884	...	...
ROME CITY:			
1960	51,646	9,984	23.9
1950	41,662	7,468	21.8
1940	34,214	1,876	5.8
1930	32,338	5,997	22.8
1920	26,341	5,844	28.5
1910	20,497	5,154	33.6
1900	15,343	352	2.3
1890	14,991	2,797	22.9
1880	12,194	1,194	10.9
1870	11,000	7,416	206.9
1860	3,584	...	...
RYE CITY:[1]			
1960	14,225	2,504	21.4
1950	11,721	1,896	18.8
1940	9,865	1,153	13.2
1930	8,712	3,404	64.1
1920	5,308	1,344	33.9
1910	3,964	...	...
SARATOGA SPRINGS CITY:[2]			
1960	16,630	1,197	7.7
1950	15,473	1,768	12.9
1940	13,705	536	4.1
1930	13,169	-12	-0.1
1920	13,181	488	3.8
1910	12,693	284	2.3
1900	12,409	434	3.6
1890	11,975	3,554	42.2
1880	8,421	905	12.0
1870	7,516	...	...
SCARSDALE VILLAGE:			
1960	17,948	4,812	36.6
1950	13,136	190	1.5
1940	12,946	3,276	33.8
1930	9,690	6,184	176.4
1920	3,506	...	...
SCHENECTADY CITY:			
1960	81,682	-10,103	-11.0
1950	91,785	4,236	4.8
1940	87,549	-8,143	-8.5
1930	95,692	6,969	7.9
1920	88,723	15,897	21.8
1910	72,826	41,144	129.9
1900	31,682	11,780	59.2
1890	19,902	6,247	45.7
1880	13,655	2,629	23.8
1870	11,026	1,447	15.1
1860	9,579	658	7.4
1850	8,921	2,137	31.5
1840	6,784	2,516	59.0
1830	4,268	329	8.4
1820	3,939	-1,964	-33.3
1810	5,903	614	11.6
1800	5,289	...	...
SYRACUSE CITY:			
1960	216,038	-4,543	-2.1
1950	220,583	14,616	7.1
1940	205,967	-3,399	-1.6
1930	209,326	37,609	21.9
1920	171,717	34,468	25.1
1910	137,249	28,875	26.6
1900	108,374	20,231	23.0
1890	88,143	36,351	70.2
1880	51,792	8,741	20.3
1870	43,051	14,932	53.1
1860	28,119	5,848	26.3
1850	22,271	...	...
TARRYTOWN VILLAGE:			
1960	11,109	2,258	25.5
1950	8,851	1,977	28.8
1940	6,874	33	0.5
1930	6,841	1,034	17.8
1920	5,807	207	3.7
1910	5,600	830	17.4
1900	4,770	1,208	33.9
1890	3,562	537	17.8
1880	3,025	...	...
TONAWANDA CITY:			
1960	21,561	6 964	47.5
1950	14,617	1,609	12.4
1940	13,008	327	2.6
1930	12,681	2,633	26.0
1920	10,068	1,778	21.4
1910	8,290	869	11.7
1900	7,421	276	3.9
1890	7,145	3,281	84.9
1880	3,864	1,052	37.4
1870	2,812	...	...
TROY CITY:			
1960	67,492	-4,819	-6.7
1950	72,311	2,007	2.9
1940	70,304	-2,459	-3.4
1930	72,763	767	1.1
1920	71,996	-4,817	-6.3
1910	76,813	16,162	26.6
1900	60,651	-305	-0.5
1890	60,956	4,209	7.4
1880	56,747	10,282	22.1
1870	46,465	7,230	18.4
1860	39,235	10,450	36.3
1850	28,785	9,451	48.9
1840	19,334	7,778	67.3
1830	11,556	6,292	119.5
1820	5,264	...	...
UTICA CITY:			
1960	100,410	-1,121	-1.1
1950	101,531	-1,013	-1.0
1940	100,518	-1,222	-1.2
1930	101,740	7,584	8.1
1920	94,156	19,737	26.5
1910	74,419	18,036	32.0
1900	56,383	12,376	28.1
1890	44,007	10,093	29.8
1880	33,914	5,110	17.7
1870	28,804	6,275	27.9
1860	22,529	4,964	28.3
UTICA CITY—Con.			
1850	17,565	4,783	37.4
1840	12,782	4,459	53.6
1830	8,323	5,351	180.0
1820	2,972	...	...
VALLEY STREAM VILLAGE:			
1960	38,629	11,775	43.8
1950	26,854	10,175	61.0
1940	16,679	4,889	41.5
1930	11,790	...	...
WATERTOWN CITY:			
1960	33,306	-1,044	-3.0
1950	34,350	965	2.9
1940	33,385	1,180	3.7
1930	32,205	920	2.9
1920	31,285	4,595	17.0
1910	26,730	5,034	23.2
1900	21,696	6,971	47.3
1890	14,725	4,028	37.7
1880	10,697	1,361	14.6
1870	9,336	...	...
WATERVLIET CITY:[3]			
1960	13,917	-1,280	-8.4
1950	15,197	-917	-5.7
1940	16,114	31	0.2
1930	16,083	10	0.1
1920	16,073	999	6.6
1910	15,074	753	5.3
1900	14,321	1,334	10.4
1890	12,987	4,147	47.0
1880	8,820	-1,873	-17.5
1870	10,693	1,873	21.2
1860	8,820	1,256	16.6
1850	7,564	...	...
WESTBURY VILLAGE:			
1960	14,737	7,643	107.5
1950	7,112	2,588	57.2
1940	4,524	...	...
WHITE PLAINS CITY:[3]			
1960	50,485	7,019	16.1
1950	43,466	3,139	7.8
1940	40,327	4,497	12.6
1930	35,830	14,799	70.4
1920	21,031	5,082	31.9
1910	15,949	8,080	101.9
1900	7,899	3,857	95.4
1890	4,042	1,661	69.8
1880	2,381	...	...
YONKERS CITY:			
1960	190,634	37,836	24.8
1950	152,798	10,200	7.2
1940	142,598	7,952	5.9
1930	134,646	34,470	34.4
1920	100,176	20,373	25.5
1910	79,803	31,872	66.5
1900	47,931	15,898	49.6
1890	32,033	13,141	69.6
1880	18,892	6,199	48.4
1870	12,733	4,515	54.9
1860	[4]8,218	...	...

[1] Rye village incorporated as a city and made independent of Rye town in 1940.
[2] The population previous to 1920 is that of Saratoga Springs village before its consolidation with Saratoga Springs town as Saratoga Springs city.
[3] Population previous to 1920 is that of White Plains village before its consolidation with White Plains town as White Plains city.
[4] Estimated.

[fol. 32p]

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1960, see table 6 for this State in *U. S. Census of Population: 1960*, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1960 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
CHENANGO COUNTY--Con.			
Sherburne town	3,338	3,046	2,928
Earlville village (pt.)	370	274	270
Sherburne village	1,647	1,404	1,192
Smithville town	891	845	805
Smyrna town	1,055	996	971
Smyrna village	286	269	256
CLINTON COUNTY	72,722	53,622	54,006
Altona town	1,730	1,711	2,026
Ausable town	2,605	1,903	1,985
Keeseville village (pt.)	1,239	1,092	1,080
Beekmantown town	2,538	1,690	1,704
Black Brook town	1,595	1,611	1,806
Ausable Forks (U) (pt.)	887	611	...
Champlain town	5,544	5,118	4,938
Champlain village	1,349	1,305	1,334
Rouses Point village	2,160	2,001	1,846
Chazy town	3,386	2,741	2,813
Clinton town	796	844	1,157
Dannemora town	6,141	5,614	6,362
Dannemora village (pt.)	4,421	3,848	4,369
Ellenburg town	1,945	2,098	2,428
Mooers town	2,587	2,509	2,686
Mooers village	563	496	477
Peru town	3,110	2,348	2,287
Plattsburgh city	20,172	17,738	16,351
Plattsburgh town	13,390	3,713	3,163
Saranac town	4,006	2,399	2,820
Dannemora village (pt.)	414	274	261
Schuyler Falls town	3,197	1,585	1,480
COLUMBIA COUNTY	47,322	43,182	41,464
Ancram town	1,080	925	1,005
Austerlitz town	809	753	626
Canaan town	1,272	1,284	1,042
Chatham town	3,402	3,188	2,873
Chatham village (pt.)	998	968	956
Claverack town	4,989	4,406	4,071
Philmont village	1,750	1,792	1,679
Clermont town	980	898	806
Copake town	1,630	1,478	1,498
Gallatin town	621	613	554
Germantown town	1,504	1,418	1,427
Ghent town	3,485	3,173	2,948
Chatham village (pt.)	1,428	1,336	1,298
Greenport town	3,299	2,055	1,864
Hillsdale town	1,299	1,183	1,050
Hudson city	11,075	11,629	11,517
Kinderhook town	4,185	3,284	3,094
Kinderhook village	1,078	853	745
Valatie village	1,237	1,225	1,208
Livingston town	1,770	1,457	1,564
New Lebanon town	1,674	1,415	1,259
Stockport town	2,025	2,054	2,229
Stottville (U)	1,040	1,020	...
Stuyvesant town	1,496	1,394	1,433
Taghkanic town	727	575	604
CORTLAND COUNTY	41,113	37,158	33,668
Cincinnatus town	960	977	997
Cortland city	19,181	18,152	15,881
Cortlandville town	5,660	4,058	3,823
Homer village (pt.)	83	67	67
McGraw village	1,276	1,197	1,201
Cuyler town	753	704	708
Freetown town	542	534	510
Harford town	635	584	572
Homer town	5,751	5,055	4,233
Homer village (pt.)	3,569	3,177	2,861
Lapeer town	459	432	450
Marathon town	1,696	1,377	1,417
Marathon village	1,079	1,057	955
Preble town	991	808	729
Scott town	600	527	535
Solon town	549	522	486
Taylor town	474	496	531
Truxton town	907	922	1,008
Virgil town	1,420	1,257	1,257
Willet town	535	553	571
DELAWARE COUNTY	43,540	44,420	40,989
DELAWARE COUNTY--Con.			
Harpersfield town	1,193	1,263	1,200
Stamford village (pt.)	428	389	358
Kortright town	1,073	1,239	1,288
Masonville town	1,030	1,010	931
Meredith town	1,112	1,133	1,182
Middletown town	3,310	3,737	3,530
Fleischmanns village	450	469	546
Margaretville village	833	905	812
Roxbury town	2,238	2,227	2,277
Sidney town	7,110	6,669	4,509
Sidney village	5,157	4,815	3,012
Stamford town	2,103	2,121	1,993
Hobart village	585	618	638
Stamford village (pt.)	738	773	730
Tompkins town	1,463	1,680	1,642
Walton town	5,753	5,724	5,220
Walton village	3,855	3,947	3,697
DUTCHESS COUNTY	176,008	136,781	120,542
Amenia town	7,346	7,481	6,873
Beacon city	13,922	14,012	12,572
Beekman town	3,326	1,703	790
Clinton town	1,639	1,233	1,070
Dover town	8,776	7,460	7,385
East Fishkill town	4,778	2,565	2,024
Fishkill town	7,083	3,863	3,615
Fishkill village	1,033	841	720
Hyde Park town	12,681	6,136	4,050
Hyde Park (U)	1,979	1,099	...
La Grange town	6,079	2,260	1,638
Milan town	944	806	695
Northeast town	2,489	2,308	2,201
Millerton village	1,027	1,048	953
Pawling town	3,938	2,891	2,752
Pawling village	1,734	1,430	1,446
Pine Plains town	1,608	1,360	1,301
Pleasant Valley town	4,046	2,751	2,061
Poughkeepsie city	38,330	41,023	40,478
Poughkeepsie town	32,164	19,984	14,495
Arlington (U)	8,317	5,374	...
Fairview (U)	8,626	1,721	...
Rochdale (U)	1,800	1,219	...
Wappingers Falls village (pt.)	1,035	1,015	1,079
Red Hook town	6,023	4,219	3,405
Red Hook village	1,719	1,225	1,056
Tivoli village	732	753	761
Rhinebeck town	4,612	3,746	3,264
Rhinebeck village	2,093	1,923	1,697
Stanford town	1,614	1,473	1,386
Union Vale town	1,138	970	1,056
Wappinger town	9,377	5,090	4,345
Wappingers Falls village (pt.)	3,412	2,475	2,348
Washington town	3,695	3,427	3,080
Millbrook village	1,717	1,568	1,340
ERIE COUNTY	1,064,688	899,238	798,377
Alden town	7,615	4,899	4,613
Alden village	2,042	1,252	954
Amherst town	62,837	33,744	19,356
Eggertsville (U)	44,807	...	...
Williamsville village	6,316	4,649	3,614
Aurora town	12,888	9,271	7,656
East Aurora village	6,791	5,962	5,253
Boston town	5,106	2,302	1,710
Brant town	2,290	1,934	1,953
Farnham village	422	396	388
Buffalo city	532,759	580,132	575,901
Cheektowaga town	84,056	45,354	25,006
Cheektowaga-Northwest (U)	52,362	...	...
Cheektowaga-Southwest (U)	12,766	...	...
Depew village (pt.)	7,359	2,058	1,399
Sloan village	5,803	4,698	3,836
Clarence town	13,267	6,331	4,426
Clarence (U)	1,456	1,018	...
Harris Hill (U)	3,944	...	...
Colden town	2,384	1,720	1,528
Collins town	6,984	6,862	3,819
Gowanda village (pt.)	1,079	1,068	950
Concord town	6,452	5,291	4,524
Springville village	3,849	3,327	2,840
ERIE COUNTY--Con.			
Lancaster town	29,605	18,471	15,299
Depew village (pt.)	6,221	5,159	4,885
Lancaster village	12,254	8,665	7,236
Marilla town	2,252	1,482	1,364
Newstead town	5,825	4,653	4,268
Akron village	2,841	2,481	2,263
North Collins town	3,809	2,943	2,550
North Collins village	1,574	1,325	1,182
Orchard Park town	15,876	8,491	5,453
Orchard Park village	3,278	2,054	1,304
Sardinia town	2,143	1,778	1,700
Tonawanda city	21,561	14,617	13,008
Tonawanda town	105,032	35,270	32,155
Kenmore village	21,261	20,066	18,612
Tonawanda (U)	83,771	...	...
Wales town	1,910	1,370	1,198
West Seneca town	33,644	17,417	12,694
West Seneca (U)	23,138	...	...
Cattaraugus Indian Reservation (pt.)	1,426	1,421	1,411
Tonawanda Indian Reservation (pt.)	30	58	43
ESSEX COUNTY	35,300	35,066	32,178
Chesterfield town	2,003	1,903	1,694
Keeseville village (pt.)	974	865	831
Crown Point town	1,685	1,707	1,661
Elizabethtown town	1,328	1,208	1,181
Elizabethtown village	779	665	640
Essex town	880	1,012	1,002
Jay town	2,257	2,181	2,226
Ausable Forks (U) (pt.)	1,139	1,032	...
Keene town	726	938	1,060
Lewis town	803	782	791
Minerva town	700	681	505
Moriah town	5,837	5,796	5,952
Mineville (U)	1,181	...	...
Port Henry village	1,767	1,831	1,935
Newcomb town	1,187	1,212	460
North Elba town	6,005	6,089	6,092
Lake Placid village	2,998	2,999	3,136
Saranac Lake village (pt.)	1,597	1,654	1,648
North Hudson town	220	258	244
St. Armand town	868	1,142	1,233
Bloomingdale village	490	476	446
Saranac Lake village (pt.)	223	202	223
Schroon town	1,220	1,176	1,044
Ticonderoga town	5,617	5,204	4,859
Ticonderoga village	3,568	3,317	3,402
Westport town	1,565	1,597	1,657
Westport village	723	733	654
Willsboro town	1,716	1,646	1,780
Wilmington town	683	574	737
FRANKLIN COUNTY	44,742	44,830	44,286
Altamont town	6,346	6,849	6,537
Tupper Lake village	5,200	5,441	5,451
Bangor town	1,896	1,738	1,734
Bellmont town	1,088	1,186	1,279
Bombay town	1,103	1,102	1,140
Brandon town	369	397	489
Brighton town	1,092	962	804
Burke town	1,475	1,348	1,414
Burke village	273	316	344
Chateaugay town	2,176	2,407	2,602
Chateaugay village	1,097	1,234	1,183
Constable town	1,153	983	919
Dickinson town	857	834	934
Duane town	95	117	121
Fort Covington town	1,905	1,764	1,767
Fort Covington village	976	891	813
Franklin town	695	872	1,002
Harrietstown town	5,664	6,014	6,117
Saranac Lake village (pt.)	4,641	5,057	5,272
Malone town	11,997	12,644	11,987
Malone village	8,737	9,301	8,743
Moira town	2,362	2,137	2,072
Brushton village	553	516	487
Santa Clara town	158	251	258
Waverly town	1,050	979	1,017
Westville town	1,287	877	831

[fol. 224]

Black Brook town	1,993	1,611	1,806
Ausable Forks (U) (pt.)	887	611	...
Champlain town	5,344	5,118	4,936
Champlain village	1,349	1,305	1,354
Rouses Point village	2,160	2,001	1,846
Chazy town	3,386	2,741	2,813
Clinton town	796	844	1,137
Dannemora town	6,141	5,614	6,342
Dannemora village (pt.)	4,421	3,848	4,369
Ellenburg town	1,945	2,098	2,428
Mooers town	2,587	2,309	2,680
Mooers village	543	496	477
Peru town	3,110	2,348	2,287
Plattsburgh city	20,172	17,738	16,351
Plattsburgh town	13,390	3,713	3,163
Saranac town	4,006	2,399	2,820
Dannemora village (pt.)	414	274	261
Schuyler Falls town	3,197	1,585	1,480
COLUMBIA COUNTY	47,322	43,182	41,464
Ancram town	1,080	925	1,005
Austerlitz town	809	753	826
Canaan town	1,272	1,284	1,062
Chatham town	3,402	3,188	2,873
Chatham village (pt.)	998	968	956
Claverack town	4,989	4,406	4,071
Philmont village	1,750	1,792	1,879
Clermont town	980	898	806
Copake town	1,630	1,478	1,498
Callatin town	621	613	554
Germantown town	1,504	1,418	1,427
Ghent town	3,485	3,173	2,948
Chatham village (pt.)	1,428	1,336	1,298
Greenport town	3,299	2,055	1,864
Hillsdale town	1,299	1,183	1,050
Hudson city	11,075	11,629	11,517
Kinderhook town	4,185	3,284	3,094
Kinderhook village	1,078	853	745
Valatie village	1,237	1,225	1,208
Livingston town	1,770	1,437	1,364
New Lebanon town	1,674	1,415	1,259
Stockport town	2,025	2,054	2,229
Stottville (U)	1,040	1,020	...
Stuyvesant town	1,496	1,394	1,433
Taghkanic town	727	575	604
CORTLAND COUNTY	41,113	37,158	33,668
Cincinnatus town	960	977	977
Cortland city	19,181	18,152	19,681
Cortlandville town	5,660	4,058	3,823
Homer village (pt.)	53	67	67
McGraw village	1,276	1,197	1,201
Cuyler town	753	704	708
Freetown town	542	534	510
Harford town	635	584	572
Homer town	5,751	5,055	4,233
Homer village (pt.)	3,569	3,177	2,861
Lapeer town	459	432	450
Marathon town	1,696	1,577	1,417
Marathon village	1,079	1,057	955
Preble town	991	808	729
Scott town	600	527	535
Solon town	549	522	486
Taylor town	474	496	531
Truxton town	907	922	1,008
Virgil town	1,420	1,237	1,257
Willet town	535	553	571
DELAWARE COUNTY	43,540	44,420	40,989
Andes town	1,274	1,665	1,687
Andes village	399	430	409
Bovina town	594	711	806
Colchester town	1,920	2,340	2,092
Davenport town	1,261	1,233	1,240
Delhi town	3,398	3,311	2,950
Delhi village	2,307	2,223	1,841
Deposit town	1,560	1,970	1,443
Deposit village (pt.)	838	882	776
Franklin town	2,133	2,156	2,019
Franklin village	525	558	481
Hamden town	1,108	1,114	1,177
Hancock town	3,907	3,517	3,813
Hancock village	1,830	1,560	1,581
Stamford village (pt.)	738	773	730
Tompkins town	1,463	1,680	1,642
Walton town	5,753	5,724	5,220
Walton village	3,855	3,947	3,697
DUTCHESS COUNTY	176,008	136,781	120,542
Amenia town	7,546	7,481	6,873
Beacon city	13,922	14,012	12,772
Beekman town	3,326	1,703	790
Clinton town	1,639	1,233	1,070
Dover town	8,776	7,460	7,385
East Fishkill town	4,778	2,565	2,024
Fishkill town	7,083	3,863	3,615
Fishkill village	1,033	841	720
Hyde Park town	12,681	6,136	4,056
Hyde Park (U)	1,979	1,059	...
La Grange town	6,079	2,280	1,638
Milan town	944	806	695
Northeast town	2,489	2,308	2,201
Millerton village	1,027	1,048	953
Pawling town	3,938	2,891	2,752
Pawling village	1,734	1,430	1,446
Pine Plains town	1,608	1,360	1,301
Pleasant Valley town	4,046	2,751	2,061
Poughkeepsie city	38,330	41,023	40,478
Poughkeepsie town	32,166	19,984	14,495
Arlington (U)	8,317	5,374	...
Fairview (U)	8,626	1,721	...
Rochdale (U)	1,800	1,219	...
Wappingers Falls village (pt.)	1,035	1,015	1,079
Red Hook town	6,023	4,219	3,405
Red Hook village	1,719	1,225	1,056
Tivoli village	732	753	761
Rhinebeck town	4,612	3,746	3,264
Rhinebeck village	2,093	1,923	1,697
Stanford town	1,614	1,473	1,386
Union Vale town	1,138	970	1,056
Wappinger town	9,577	5,090	4,345
Wappingers Falls village (pt.)	3,612	2,475	2,348
Washington town	3,695	3,427	3,080
Millbrook village	1,717	1,568	1,340
ERIE COUNTY	1,064,688	899,238	798,377
Alden town	7,615	4,899	4,613
Alden village	2,042	1,252	954
Amherst town	62,837	33,744	19,356
Eggertsville (U)	44,807	...	...
Williamsville village	6,316	4,649	3,614
Aurora town	12,888	9,271	7,636
East Aurora village	6,791	5,962	5,253
Boston town	5,106	2,302	1,710
Brant town	2,290	1,934	1,753
Farnham village	422	396	388
Buffalo city	532,759	580,132	575,901
Cheektowaga town	84,056	45,354	25,006
Cheektowaga-Northwest (U)	52,362	...	...
Cheektowaga-Southwest (U)	12,766	...	...
Depew village (pt.)	7,359	2,058	1,399
Sloan village	5,803	4,698	3,836
Clarence town	13,267	6,331	4,426
Clarence (U)	1,436	1,018	...
Harris Hill (U)	3,944	...	...
Colden town	2,384	1,720	1,528
Collins town	6,984	6,862	5,819
Gowanda village (pt.)	1,079	1,068	950
Concord town	6,452	5,291	4,524
Springville village	3,852	3,322	2,849
Eden town	6,630	4,201	3,295
Eden (U)	2,266	1,394	...
Elma town	7,468	4,020	2,801
Evans town	12,078	7,663	5,047
Angola village	2,499	1,936	1,663
Lake Erie Beach (U)	2,117	...	...
Grand Island town	9,607	3,090	1,055
Hamburg town	41,288	25,067	17,190
Blasdell village	3,909	3,127	2,322
Hamburg village	9,145	6,938	5,467
Hamburg-Lake Shore (U)	11,527	...	...
Scranton (U)	1,078	...	...
Holland town	2,304	1,728	1,496
Lackawanna city	29,564	27,658	24,058
Tonawanda town	105,032	55,270	32,155
Kenmore village	21,261	20,066	18,612
Tonawanda (U)	83,771	...	...
Wales town	1,910	1,370	1,198
West Seneca town	33,644	17,417	12,694
West Seneca (U)	23,138	...	...
Cattaraugus Indian Reservation (pt.)	1,426	1,421	1,411
Tonawanda Indian Reservation (pt.)	30	58	43
ESSEX COUNTY	35,300	35,086	34,178
Chesterfield town	2,003	1,903	1,694
Keeseville village (pt.)	974	885	831
Crown Point town	1,685	1,707	1,661
Elizabethtown town	1,328	1,208	1,181
Elizabethtown village	779	665	640
Essex town	880	1,012	1,002
Jay town	2,257	2,181	2,226
Ausable Forks (U) (pt.)	1,139	1,032	...
Keene town	726	938	1,060
Lewis town	803	782	791
Minerva town	700	681	595
Moriah town	5,837	5,796	5,952
Mineville (U)	1,181	...	...
Port Henry village	1,769	1,831	1,935
Newcomb town	1,187	1,212	460
North Elba town	6,009	6,089	6,092
Lake Placid village	2,998	2,999	3,136
Saranac Lake village (pt.)	1,597	1,654	1,643
North Hudson town	220	258	364
St. Armand town	868	1,142	1,233
Bloomingdale village	490	476	446
Saranac Lake village (pt.)	223	202	223
Schroon town	1,220	1,176	1,044
Ticonderoga town	5,617	5,204	4,859
Ticonderoga village	3,568	3,517	3,402
Westport town	1,565	1,597	1,657
Westport village	723	733	654
Willsboro town	1,716	1,646	1,780
Wilmington town	683	574	737
FRANKLIN COUNTY	44,742	44,830	44,286
Altamont town	6,346	6,849	6,337
Tupper Lake village	5,200	5,441	5,451
Bangor town	1,896	1,738	1,734
Bellmont town	1,088	1,186	1,279
Bombay town	1,103	1,102	1,140
Brandon town	369	397	489
Brighton town	1,092	962	804
Burke town	1,475	1,348	1,414
Burke village	273	316	344
Chateaugay town	2,176	2,407	2,602
Chateaugay village	1,097	1,234	1,183
Constable town	1,153	983	919
Dickinson town	857	838	934
Duane town	95	117	127
Fort Covington town	1,905	1,764	1,767
Fort Covington village	976	891	813
Franklin town	695	872	1,002
Harrietstown town	5,664	6,014	6,117
Saranac Lake village (pt.)	4,641	5,097	5,272
Malone town	11,997	12,644	11,987
Malone village	8,737	9,301	8,743
Moira town	2,362	2,137	2,072
Brushton village	553	516	487
Santa Clara town	158	251	258
Waverly town	1,050	979	1,017
Westville town	1,287	877	831
St. Regis Indian Reservation	1,774	1,409	1,262
FULTON COUNTY	51,304	51,021	48,597
Bleecker town	245	220	190
Broadalbin town	2,945	2,543	2,300
Broadalbin village (pt.)	1,422	1,391	1,399
Caroga town	568	462	408
Ephratah town	1,237	1,063	1,045
Gloversville city	21,741	23,634	23,329
Johnstown city	10,390	10,923	10,666
Johnstown town	5,120	4,153	3,561
Mayfield town	3,613	3,165	2,734
Broadalbin village (pt.)	16	9	...
Mayfield village	818	761	759

See footnotes at end of table, p. 20.

[fol. 329]

329

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1960, see table 6 for this State in *U. S. Census of Population: 1960*, Vol. 1 or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1950 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
FULTON COUNTY—Con.			
Northampton town	2,033	1,925	1,761
Northville village	1,156	1,114	1,111
Oppenheim town	1,223	1,190	1,202
Ridgeville village (pt.)	185	166	158
Perth town	1,768	1,299	1,000
Stratford town	421	466	401
GENESEE COUNTY	53,994	47,284	44,481
Alabama town	1,931	1,786	1,763
Alexander town[11]	1,987	1,591	1,423
Alexander village[11]	335	304	265
Attica village (pt.)[11]	...	...	...
Batavia city[12]	18,210	17,799	17,287
Batavia town[12]	4,325	2,824	2,261
Bergen town	1,994	1,588	1,412
Bergen village	964	786	698
Bethany town	1,589	1,410	1,231
Byron town	1,589	1,381	1,374
Darien town	2,357	1,899	1,667
Elba town	2,280	1,920	1,955
Elba village	739	589	614
Le Roy town	6,779	4,273	5,838
Le Roy village	4,662	4,721	4,413
Oakfield town	3,388	3,041	2,896
Oakfield village[13]	2,070	1,781	1,676
Pavilion town	1,721	1,459	1,361
Pembroke town	3,451	2,866	2,391
Corfu village	616	542	462
Stafford town	2,005	1,395	1,246
Tonawanda Indian Reservation (pt.)	421	410	496
GREENE COUNTY	31,372	28,745	27,926
Ashland town	548	542	566
Athens town	2,804	2,372	2,375
Athens village	1,734	1,549	1,685
Cairo town	2,825	1,944	1,905
Catskill town	9,906	8,975	8,630
Catskill village	5,825	5,392	5,429
Coeymans town	4,784	4,703	4,146
Coeymans village	2,849	2,722	2,332
Durham town	1,313	1,233	1,223
Greenville town	1,879	1,613	1,477
Halcott town	193	244	273
Hunter town	1,799	2,028	2,166
Hunter village	457	526	626
Tannersville village	580	639	640
Jewett town	562	692	732
Lexington town	698	833	827
New Baltimore town	1,972	1,781	1,489
Prattsville town	790	825	848
Windham town	1,289	1,360	1,369
HAMILTON COUNTY	4,267	4,103	4,186
Arietta town	235	219	183
Benson town	87	85	89
Hope town	234	180	164
Indian Lake town	1,186	1,099	1,257
Inlet town	307	319	310
Lake Pleasant town	718	696	584
Speculator village	372	370	278
Long Lake town	896	896	943
Morehouse town	65	104	91
Wells town	539	507	587
HERKIMER COUNTY	66,370	61,407	59,527
Columbia town	1,327	1,132	931
Danube town	911	847	849
Fairfield town	1,282	1,204	1,095
Middleville village (pt.)	412	431	389
Frankfort town	7,550	6,598	6,247
Frankfort village	3,872	3,844	3,859
German Flatts town	15,742	14,106	13,053
Ilion village	10,199	9,363	8,927
Mohawk village	3,533	3,196	2,882
Herkimer town	11,568	11,239	11,343
East Herkimer (U)	1,068	...	...
Herkimer village	9,396	9,400	9,617
Litchfield town	963	776	779
Little Falls city[13]	8,935	9,341	10,163
Little Falls town[13]	1,188	874	777
Manheim town	3,872	3,897	3,748
Dolgeville village (pt.)	2,873	3,038	3,037
Newport town	1,907	1,626	1,481
Middleville village (pt.)	236	214	213
Newport village	827	752	627
[illegible]	[illegible]	[illegible]	[illegible]

County and minor civil division	1960	1950	1940
JEFFERSON COUNTY	87,835	85,321	84,003
Adams town	3,964	3,629	3,334
Adams village[14]	1,914	1,762	1,594
Alexandria town	3,574	3,583	3,533
Alexandria Bay village	1,383	1,688	1,748
Antwerp town	1,905	1,781	2,187
Antwerp village	881	846	817
Brownville town	3,985	3,806	3,671
Brownville village	1,082	1,013	907
Dexter village	1,009	1,038	1,109
Glen Park village (pt.)	478	303	518
Cape Vincent town	1,736	1,842	1,934
Cape Vincent village	770	812	931
Champion town	3,878	3,499	3,103
West Carthage village	2,167	2,000	1,787
Clayton town	3,733	3,738	3,768
Clayton village	1,996	1,981	1,999
Ellisburg town	3,285	3,116	3,183
Ellisburg village	328	285	253
Rosiere village	446	378	348
Henderson town	1,207	1,171	1,163
Hounsfield town	2,722	2,630	3,137
Sackets Harbor village	1,279	1,247	1,962
Le Ray town	3,627	2,821	2,551
Black River village (pt.)	662	598	535
Brans Mills village[14]	618	518	523
Lorraine town	809	681	782
Lyme town	1,448	1,498	1,462
Clayton village	523	513	534
Orleans town	1,982	1,807	1,664
Pamelia town	1,414	992	855
Glen Park village (pt.)	83	13	5
Philadelphia town	1,297	1,222	1,372
Philadelphia village	868	870	722
Rodman town	765	816	836
Rutland town	2,229	1,925	1,622
Black River village (pt.)	375	464	362
Theresa town	1,635	1,660	1,675
Theresa village	956	925	908
Watertown city[14]	33,306	34,330	33,385
Watertown town[14]	2,482	1,752	1,399
Wilna town	6,809	6,969	7,029
Carthage village	4,216	4,430	4,207
Deferiet village	470	616	630
Herrings village	327	192	232
Worth town	193	253	318
KINGS COUNTY	2,627,319	2,738,175	2,698,285
Brooklyn Borough (pt. of New York City)	2,627,319	2,738,175	2,698,285
LEWIS COUNTY	23,249	22,321	22,815
Croghan town	2,697	2,544	2,557
Croghan village (pt.)	453	432	476
Denmark town	2,214	2,134	1,992
Castorland village	321	308	309
Copenhagen village	673	690	608
Diana town	1,641	1,717	1,871
Harrisville village	842	868	832
Greig town	693	642	747
Harrisburg town	423	480	537
High Market town	95	121	190
Lewis town	587	584	613
Leyden town	1,715	1,622	1,519
Port Leyden village (pt.)	671	660	634
Lowville town	4,635	4,623	4,586
Lowville village[14]	3,616	3,671	3,778
Lyonsdale town	942	873	909
Lyons Falls village (pt.)	71	70	47
Port Leyden village (pt.)	227	181	170
Martinsburg town	1,469	1,387	1,363
Montague town	73	139	329
New Bremen town	1,943	1,729	1,707
Croghan village (pt.)	368	340	325
Osceola town	181	244	281
Pinckney town	387	439	613
Turin town	878	856	859
Turin village	323	273	347
Watson town	781	586	536
West Turin town	1,905	1,781	1,806
Constableville village	439	378	340
Lyons Falls village (pt.)	816	794	771
LIVINGSTON COUNTY	44,053	40,297	38,510
Ayon town	4,404	3,725	3,509
[illegible]	[illegible]	[illegible]	[illegible]

County and minor civil division	1960	1950	1940
LIVINGSTON COUNTY—Con.			
Mount Morris town	4,567	2,836	4,904
Mount Morris village	3,230	3,450	3,330
North Dansville town	6,095	5,755	5,332
Dansville village[14]	5,460	5,253	4,976
Nunda town	2,309	2,272	2,113
Nunda village	1,224	1,224	1,077
Ossian town	489	307	532
Portage town	733	737	945
Sparta town	1,019	971	887
Springwater town	1,293	1,318	1,274
West Sparta town	817	724	688
York town	2,695	2,329	2,287
MADISON COUNTY	54,635	46,224	39,598
Brookfield town	1,990	1,841	1,703
Canaseraga town	4,968	3,989	3,434
Canaseraga village	2,584	1,946	1,689
DeRuyter town	1,290	1,165	1,089
DeRuyter village	627	561	526
Eaton town	3,196	2,854	2,245
Morrisville village	1,304	1,250	666
Fenner town	900	852	794
Georgetown town	639	616	734
Hamilton town	5,438	5,455	3,618
Earlville village (pt.)	634	671	594
Hamilton village[17]	3,348	3,307	1,790
Lebanon town	880	890	914
Lenox town	7,729	6,515	5,770
Oneastota village[18]	4,896	4,458	4,150
Wampsville village	564	379	382
Lincoln town	1,102	934	853
Madison town	1,915	1,615	1,592
Madison village	327	335	300
Nelson town	1,170	993	928
Oneida city	11,677	11,325	10,291
Smithfield town	804	758	630
Stockbridge town	1,574	1,537	1,258
Munnsville village	391	412	297
Sullivan town	9,369	4,905	3,775
Chittenango village[19]	3,180	1,307	885
MONROE COUNTY	586,387	487,632	436,250
Brighton town[16]	27,849	18,036	13,132
Chili town[13]	11,237	5,283	3,392
Clarkson town	2,339	1,912	1,449
Brockport village (pt.)[16]	...	...	...
Gates town[16]	13,755	7,925	4,965
Greece town[13]	48,670	25,308	14,925
Hamlin town	2,755	2,321	2,080
Henrietta town	11,598	3,385	2,728
Henrietta Northeast (U)	6,403	...	...
Irondequoit town[16]	55,337	34,417	23,376
Mendon town	3,902	2,803	2,700
Honeoye Falls village	2,143	1,460	1,274
Ogden town	7,262	3,970	3,435
Spencerport village[16]	2,461	1,595	1,340
Parma town	6,277	4,049	3,387
Hilton village	1,334	1,036	895
Pittsford town	12,601	4,847	3,774
Perinton town	16,314	11,559	10,170
East Rochester village (pt.)[16]	3,214	2,864	2,790
Fairport village[16]	5,307	3,267	4,644
Pittsford town	15,156	9,413	7,741
East Rochester village (pt.)[16]	4,938	4,158	3,901
Pittsford village	1,749	1,668	1,344
Rigo town	2,800	1,906	1,659
Churchville village[16]	1,003	755	601
Rochester city[15]	318,611	332,488	324,975
Rush town	2,555	2,052	1,791
Sweden town	7,224	5,982	4,898
Brockport village (pt.)	5,256	4,748	3,590
Webster town	16,434	7,174	5,320
Webster village[16]	3,060	1,773	1,680
Wheatland town	3,711	2,302	2,323
Scottsville village[16]	1,863	1,025	925
MONTGOMERY COUNTY	57,240	59,594	59,142
Amsterdam city	28,772	32,240	33,329
Amsterdam town	5,400	4,698	3,911
Fort Johnson village	876	930	868
Hagaman village	1,292	1,114	933

[fol. 32r]

Byron town	1,589	1,381	1,374
Darien town	2,397	1,899	1,687
Elba town	2,280	1,920	1,855
Elba village	739	589	614
Le Roy town	6,779	6,275	5,838
Le Roy village	4,462	4,721	4,413
Oakfield town	3,388	3,041	2,896
Oakfield village[13]	2,070	1,782	1,876
Pavilion town	1,728	1,499	1,361
Pembroke town	3,451	2,866	2,381
Corfu village	616	542	462
Stafford town	2,005	1,395	1,346
Tonawanda Indian Reservation (pt.)	426	410	496
GREENE COUNTY	31,372	28,743	27,926
Ashland town	548	542	366
Athens town	2,804	2,372	2,375
Athens village	1,754	1,345	1,455
Cairo town	2,825	1,944	1,905
Catskill town	9,906	8,575	8,630
Catskill village	5,825	5,392	5,429
Coxsackie town	4,794	4,703	4,346
Coxsackie village	2,849	2,723	2,352
Durham town	1,313	1,235	1,223
Greenville town	1,879	1,613	1,477
Halcott town	193	344	273
Hunter town	1,799	2,028	2,144
Hunter village	457	528	626
Tannersville village	580	639	640
Jewett town	562	692	732
Lexington town	698	833	827
New Baltimore town	1,972	1,781	1,489
Prattsville town	790	825	848
Windham town	1,289	1,380	1,389
HAMILTON COUNTY	4,287	4,105	4,188
Arietta town	235	219	183
Benson town	87	83	89
Hope town	234	180	164
Indian Lake town	1,186	1,099	1,257
Inlet town	307	319	310
Lake Pleasant town	718	696	584
Speculator village	372	370	278
Long Lake town	896	896	943
Morehouse town	65	104	91
Wells town	539	307	367
HERKIMER COUNTY	66,370	61,407	59,527
Columbia town	1,327	1,132	931
Danube town	911	847	849
Fairfield town	1,282	1,204	1,093
Middleville village (pt.)	412	431	399
Frankfort town	7,330	6,598	6,247
Frankfort village	3,872	3,844	3,839
German Flatts town	15,742	14,106	13,053
Ilion village	10,199	9,363	8,927
Mohawk village	3,333	3,196	2,882
Herkimer town	11,568	11,235	11,345
East Herkimer (U)	1,068	...	...
Herkimer village	9,396	9,400	9,617
Litchfield town	963	776	779
Little Falls city[13]	8,935	9,541	10,163
Little Falls town[13]	1,188	874	777
Manheim town	3,872	3,897	3,748
Dolgeville village (pt.)	2,873	3,038	3,097
Newport town	1,907	1,626	1,481
Middleville village (pt.)	236	216	213
Newport village	827	752	627
Poland village (pt.)	160	112	102
Norway town	427	447	386
Ohio town	480	547	460
Russia town	1,761	1,420	1,281
Cold Brook village	372	342	371
Poland village (pt.)	404	399	376
Salisbury town	1,551	1,469	1,319
Schuyler town	1,893	1,169	1,176
Stark town	783	793	858
Warren town	918	956	873
Webb town	1,562	1,308	1,373
Winfield town	1,730	1,462	1,333
West Winfield village	960	832	754
Ellisburg town	3,285	3,116	3,183
Ellisburg village	328	285	253
Mannsville village	446	378	348
Henderson town	1,207	1,171	1,163
Hounsfield town	2,722	2,630	3,137
Sackets Harbor village	1,279	1,267	1,962
Le Ray town	3,627	2,821	2,351
Black River village (pt.)	662	398	535
Brens Mills village[14]	618	318	325
Lorraine town	609	681	782
Lyme town	1,448	1,458	1,462
Chaumont village	523	513	534
Orleans town	1,982	1,807	1,664
Pamelia town	1,414	992	855
Glen Park village (pt.)	83	13	5
Philadelphia town	1,297	1,222	1,372
Philadelphia village	868	870	722
Rodman town	765	816	836
Rutland town	2,229	1,925	1,622
Black River village (pt.)	375	464	362
Theresa town	1,635	1,660	1,673
Theresa village	956	925	908
Watertown city[14]	33,306	34,350	33,385
Watertown town[14]	2,492	1,752	1,395
Wilna town	6,809	6,969	7,029
Carthage village	4,216	4,420	4,207
Deferiet village	470	616	620
Herrings village	4329	192	232
Worth town	193	253	318
KINGS COUNTY	2,627,319	2,738,175	2,698,285
Brooklyn Borough (pt. of New York City)	2,627,319	2,738,175	2,698,285
LEWIS COUNTY	23,249	22,521	22,815
Croghan town	2,697	2,544	2,597
Croghan village (pt.)	433	432	476
Denmark town	2,214	2,154	1,992
Castorland village	321	308	309
Copenhagen village	673	690	808
Diana town	1,641	1,717	1,871
Harrisville village	842	868	832
Greig town	693	642	747
Harrisburg town	423	480	537
High Market town	98	121	190
Leyden town	587	584	413
Lowville town	1,715	1,622	1,519
Lowville village[13]	871	860	824
Lyonsdale town	4,635	4,623	4,586
Lyons Falls village (pt.)	3,816	3,872	3,978
Port Leyden village (pt.)	942	873	909
Martinsburg town	71	70	47
Montague town	227	181	170
New Bremen town	1,469	1,387	1,363
Croghan village (pt.)	73	139	329
Osceola town	1,963	1,729	1,707
Pinckney town	368	340	325
Turin town	181	244	281
Turin village	377	439	613
Watson town	878	836	859
West Turin town	323	273	247
Constableville village	781	586	536
Lyons Falls village (pt.)	1,905	1,781	1,806
LIVINGSTON COUNTY	44,053	40,257	38,510
Avon town	4,404	3,725	3,309
Avon village	2,772	2,412	2,339
Caledonia town	3,087	2,529	2,009
Caledonia village[13]	1,917	1,683	1,226
Conesus town	1,221	809	809
Geneseo town	4,337	3,782	3,133
Geneseo village	3,284	2,838	2,144
Groveland town	3,373	3,381	4,135
Leicester town	1,392	1,350	1,371
Leicester village	365	364	327
Lima town	2,716	2,336	1,986
Lima village[13]	1,366	1,147	942
Livonia town	3,326	2,896	2,396
Livonia village[13]	946	837	751
Canajoharie town	4,986	3,989	3,426
Canaseraga village	2,986	1,946	1,689
Dalhousie town	1,890	1,185	1,089
Dalhousie village	637	381	326
Eaton town	3,196	2,834	2,265
Morrisville village	1,304	1,250	666
Fenner town	900	852	784
Georgetown town	633	616	734
Hamilton town	5,438	5,455	3,618
Earlville village (pt.)	634	671	584
Hamilton village	3,348	3,307	1,790
Lebanon town	880	880	914
Lenox town	7,729	6,315	5,770
Canastota village[13]	4,896	4,458	4,130
Chapinville village	584	379	282
Lincoln town	1,102	934	853
Madison town	1,815	1,615	1,392
Madison village	327	335	300
Nelson town	1,170	993	928
Oneida city	11,677	11,325	10,291
Smithfield town	804	758	830
Stockbridge town	1,574	1,537	1,258
Munnsville village	391	412	397
Sullivan town	9,389	4,905	3,773
Chittenango village	3,180	1,307	885
MONROE COUNTY	389,387	487,632	438,330
Brighton town[13]	27,849	18,036	13,132
Chili town[13]	11,237	5,283	3,392
Clarkson town	2,339	1,912	1,449
Brockport village (pt.)[13]	...	...	...
Gates town[13]	13,735	7,925	4,965
Greece town[13]	48,670	25,308	14,925
Hamlin town	2,755	2,321	2,080
Henrietta town	11,598	5,385	2,728
Henrietta Northeast (U)	6,403	...	...
Irondequoit town[13]	55,337	34,417	23,376
Mendon town	3,902	2,903	2,700
Honeoye Falls village	2,143	1,460	1,274
Ogden town	7,262	3,970	3,435
Spencerport village[13]	2,461	1,395	1,340
Parma town	6,277	4,049	3,387
Hilton village	1,334	1,036	895
Penfield town	12,601	4,849	3,774
Perinton town	16,314	11,599	10,170
East Rochester village (pt.)[13]	3,214	2,864	2,780
Fairport village[13]	5,307	5,287	4,644
Pittsford town	15,156	9,413	7,741
East Rochester village (pt.)[13]	4,938	4,136	3,901
Pittsford village	1,749	1,868	1,544
Rigs town	2,800	1,906	1,669
Churchville village[13]	1,003	733	601
Rochester city[13]	318,611	332,488	326,975
Rush town	2,555	2,052	1,791
Sweden town	7,224	5,982	4,698
Brockport village (pt.)	5,256	4,048	3,390
Webster town	16,434	7,174	5,320
Webster village[13]	3,060	1,773	1,680
Wheatland town	3,711	2,502	2,323
Scottsville village[13]	1,863	1,025	925
MONTGOMERY COUNTY	37,240	39,594	39,142
Amsterdam city	28,772	32,240	33,329
Amsterdam town	5,400	4,698	3,911
Fort Johnson village	876	930	868
Hagaman village	1,292	1,114	933
Canajoharie town	4,233	4,294	4,082
Ames village	162	193	180
Canajoharie village[13]	2,681	2,761	2,977
Fort Plain village (pt.)	...	9	7
Charleston town	546	573	609
Florida town	2,168	2,032	1,848
Glen town	1,734	1,742	1,754
Fultonville village	813	840	806
Minden town	4,560	4,636	4,376
Fort Plain village (pt.)	2,809	2,928	2,763
Mohawk town	3,070	2,680	2,733
Fonda village	1,004	1,026	1,123

[fol. 32r]

60

32R

4 The revised population total for Herrings is 171. This error was discovered too late for correction in the detailed distributions.

The figure in the table includes population for an area misclassified as inside, rather than outside, the village limits.

See other footnotes at end of table, p. 20.

Table 6.—AREA AND POPULATION OF COUNTIES, URBAN AND RURAL: 1960 AND 1950

(Minus sign (–) denotes decrease. Percent not shown where less than 0.1)

County	Map reference	Land area in square miles, 1960	1960 population									1950 population			Percent increase, 1950 to 1960		
			Total		Urban				Rural			Total	Urban	Rural	Total	Urban	Rural
			Number	Per square mile	Total	Percent of total population	Urbanized areas	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory						
The State	...	47,939	16,782,304	350.1	14,331,925	85.4	12,918,455	1,413,470	2,450,379	309,250	2,141,129	14,830,192	12,682,446	2,147,746	13.2	13.0	14.1
Albany	F-10	531	272,926	514.0	228,010	83.5	228,010	...	44,916	5,003	39,913	239,386	198,117	41,269	14.0	15.1	8.8
Allegany	F-3	1,048	43,978	42.0	8,774	20.0	...	8,774	35,204	6,978	28,226	43,784	6,402	37,382	0.4	37.1	-5.8
Bronx	J-10	43	1,424,815	33,135.2	1,424,815	100.0	1,424,815	...	...	...	...	1,451,277	1,451,277	...	-1.8	-1.8	...
Broome	F-7	710	212,661	299.5	158,141	74.4	158,141	...	54,520	3,262	51,258	184,698	144,011	40,687	15.1	9.8	34.0
Cattaraugus	F-2	1,335	80,187	60.1	32,621	40.7	...	32,621	47,566	10,590	36,976	77,901	33,966	43,935	2.9	-4.0	-8.3
Cayuga	E-6	699	73,942	105.8	35,249	47.7	...	35,249	38,693	7,631	31,062	70,136	36,722	33,414	5.4	-4.0	15.8
Chautauqua	G-1	1,080	145,377	134.6	82,964	57.1	...	82,964	62,413	7,412	55,001	135,189	81,492	53,697	7.5	1.8	16.2
Chemung	G-3	412	98,706	239.6	73,870	74.8	...	73,870	24,836	...	24,836	86,827	62,164	24,663	13.7	18.8	0.7
Chenango	F-7	908	43,243	47.6	9,175	21.2	...	9,175	34,068	8,913	25,155	39,138	8,816	30,322	10.5	4.1	12.4
Clinton	A-10	1,059	72,722	68.7	25,007	34.4	...	25,007	47,715	5,835	41,880	53,622	21,860	31,762	35.6	14.4	30.2
Columbia	F-10	643	47,322	73.6	11,075	23.4	...	11,075	36,247	7,531	28,716	43,182	11,629	31,553	9.6	-4.8	14.9
Cortland	F-6	502	41,113	81.9	22,803	55.5	...	22,803	18,310	2,355	15,955	37,158	21,396	15,762	10.6	6.6	16.2
Delaware	G-8	1,470	43,340	29.6	9,012	20.7	...	9,012	34,328	6,141	28,187	44,420	8,762	35,658	-2.0	2.9	-3.2
Dutchess	G-10	816	176,008	215.7	73,642	41.8	...	73,642	102,366	13,102	89,264	136,781	63,899	72,882	28.7	15.2	40.5
Erie	E-2	1,054	1,064,688	1,010.1	932,527	87.6	901,597	30,930	132,161	13,132	119,029	899,238	790,602	108,636	18.4	18.0	21.7
Essex	B-10	1,826	35,300	19.3	8,346	23.6	...	8,346	26,954	5,061	21,893	35,086	8,372	26,714	0.6	-0.3	0.9
Franklin	A-9	1,685	44,742	26.6	18,578	41.5	...	18,578	26,164	1,097	25,067	44,830	19,999	24,831	-0.2	-7.1	5.4
Fulton	D-9	497	51,304	103.2	32,316	63.0	...	32,316	18,988	2,394	16,594	51,021	34,723	16,298	0.6	-6.9	16.5
Genesee	E-3	501	53,994	107.8	22,872	42.4	...	22,872	31,122	2,070	29,052	47,384	22,520	25,064	13.5	1.6	24.2
Greene	F-10	653	31,372	48.0	8,674	27.6	...	8,674	22,698	1,754	20,944	28,745	8,114	20,631	9.1	6.9	10.0
Hamilton	C-8	1,747	4,267	2.4	...	...	...	...	4,267	...	4,267	4,105	...	4,105	3.9	...	3.9
Herkimer	C-8	1,442	66,370	46.0	39,274	59.2	466	38,808	27,096	1,068	26,028	61,407	38,479	22,928	8.1	2.1	18.2
Jefferson	B-8	1,293	87,835	67.9	37,322	42.7	...	37,322	50,313	12,267	38,046	85,521	38,770	46,751	2.7	-3.2	7.6
Kings	J-10	76	2,627,319	34,570.0	2,627,319	100.0	2,627,319	...	...	...	...	2,738,175	2,738,175	...	-4.0	-4.0	...
Lewis	C-7	1,293	23,249	18.0	3,616	15.6	...	3,616	19,633	...	19,633	22,321	3,671	18,650	3.2	-1.5	4.2
Livingston	F-4	638	44,053	69.0	14,766	33.5	...	14,766	29,287	2,507	26,780	40,277	11,541	28,716	9.4	27.9	2.0
Madison	E-7	661	54,635	82.7	25,683	47.0	...	25,683	28,950	1,938	27,012	44,214	19,290	24,924	18.2	33.2	7.5
Monroe	D-4	673	586,387	871.3	508,121	86.7	493,402	14,719	78,266	8,804	69,462	487,632	419,164	68,468	20.3	21.2	14.3
Montgomery	E-9	409	57,240	140.0	34,262	59.9	...	34,262	22,978	4,492	18,486	58,594	37,936	21,658	-4.0	-9.7	6.1
Nassau	J-10	300	1,300,171	4,333.9	1,295,650	99.7	1,295,650	...	4,521	...	4,521	672,765	624,102	48,663	93.3	107.6	-90.7
New York	J-10	22	1,698,281	77,194.6	1,698,281	100.0	1,698,281	...	...	...	...	1,960,101	1,960,101	...	-13.4	-13.4	...
Niagara	D-2	533	242,269	454.5	179,216	74.0	152,773	26,443	63,053	7,688	55,365	189,992	147,484	42,508	27.5	21.5	48.3
Oneida	D-7	1,227	264,401	215.5	192,929	73.0	187,313	5,616	71,472	9,022	62,450	222,855	159,009	63,846	18.6	21.3	11.9
Onondaga	D-6	792	423,028	534.1	342,192	80.9	333,286	8,906	80,836	3,087	77,749	341,719	272,405	69,314	23.8	25.6	16.6
Ontario	E-4	649	68,070	104.9	26,656	39.2	...	26,656	41,414	8,983	32,431	60,172	25,476	34,696	13.1	4.6	19.4
Orange	H-9	829	183,734	221.6	93,139	50.7	...	93,139	90,595	16,625	73,970	152,255	81,142	71,113	20.7	14.8	27.4
Orleans	D-3	396	34,159	88.3	11,863	34.7	...	11,863	22,296	1,788	20,508	29,832	11,029	18,803	14.5	7.6	18.6
Oswego	D-7	968	86,118	89.0	36,416	42.3	...	36,416	49,702	6,129	43,573	77,181	36,569	40,612	11.6	-0.4	22.4
Otsego	E-9	1,013	51,942	51.3	15,965	30.7	...	15,965	35,977	4,652	31,325	50,763	16,291	34,472	2.3	-2.0	4.4
Putnam	H-10	235	31,722	135.0	3,067	9.7	332	2,735	28,655	5,134	23,521	20,307	...	20,307	56.2	...	41.1
Queens	J-10	113	1,809,578	16,014.0	1,809,578	100.0	1,809,578	...	...	...	...	1,550,849	1,550,849	...	16.7	16.7	...
Rensselaer	E-11	665	142,585	214.4	92,147	64.6	88,134	4,023	50,438	4,325	46,113	132,607	94,396	38,211	7.5	-2.4	32.0
Richmond	J-9	60	221,991	3,699.9	221,991	100.0	221,991	...	...	...	...	191,555	191,555	...	15.9	15.9	...
Rockland	I-10	178	136,803	768.6	103,930	76.0	87,244	16,686	32,873	...	32,873	89,276	43,551	45,725	53.2	138.6	-28.1
St. Lawrence	A-8	2,767	111,239	40.2	49,357	44.4	...	49,357	61,882	3,553	58,329	98,897	46,089	52,808	12.5	7.1	17.2
Saratoga	D-10	814	89,096	109.5	42,911	48.2	7,137	35,774	46,185	4,867	41,318	74,869	40,075	34,794	19.0	7.1	32.7
Schenectady	E-10	209	152,896	731.6	132,176	86.4	132,176	...	20,720	...	20,720	142,497	121,480	21,017	7.3	8.8	-1.4
Schoharie	F-9	625	22,616	36.2	3,471	15.3	...	3,471	19,145	2,485	16,660	22,703	3,208	19,495	-0.4	8.2	-1.8
Schuyler	F-5	331	15,044	45.5	2,813	18.7	...	2,813	12,231	1,533	10,698	14,182	3,052	11,130	6.1	-7.8	9.9
Seneca	E-5	330	31,984	96.9	12,537	39.2	...	12,537	19,447	...	19,447	29,253	11,072	18,181	9.3	13.2	7.0
Steuben	F-4	1,408	97,691	69.4	42,459	43.5	...	42,459	55,232	8,928	46,304	91,439	40,774	50,665	6.8	4.1	9.0
Suffolk	J-11	922	666,784	723.2	481,841	72.3	324,867	156,974	184,943	37,365	147,578	276,129	121,883	154,246	141.5	295.3	19.9
Sullivan	G-8	986	43,272	43.9	9,926	22.9	...	9,926	33,346	4,404	30,942	40,731	8,881	31,850	11.1	11.8	11.0
Tioga	F-6	525	37,802	72.0	11,367	30.1	...	11,367	26,435	1,234	25,201	30,166	11,387	18,779	25.3	-0.2	40.8
Tompkins	F-6	491	66,164	134.8	31,587	47.7	...	31,587	34,577	5,154	29,423	59,122	29,257	29,865	11.9	8.0	15.8
Ulster	G-9	1,143	118,804	103.9	49,850	42.0	...	49,850	68,954	5,130	63,824	92,621	39,984	52,637	28.3	24.7	31.0
Warren	C-9	883	44,002	49.8	21,305	48.4	...	21,305	22,697	3,266	19,431	39,205	19,610	19,595	12.2	8.6	15.8
Washington	D-10	837	48,476	57.9	18,220	37.6	...	18,220	30,256	5,087	25,169	47,144	18,316	28,828	2.8	-0.5	5.0
Wayne	D-5	607	67,989	112.0	23,710	34.9	...	23,710	44,279	4,976	39,303	57,323	17,546	39,777	18.6	35.1	11.3
Westchester	I-10	435	808,891	1,859.5	749,529	92.7	745,953	3,576	59,362	5,754	53,608	625,816	577,601	48,215	29.3	29.8	23.1
Wyoming	E-3	598	34,793	58.2	11,040	31.7	...	11,040	23,753	3,076	20,677	32,822	10,922	21,900	6.0	1.1	8.5
Yates	E-5	344	18,814	54.1	5,770	31.0	...	5,770	12,844	1,468	11,376	17,615	5,481	12,134	6.7	5.3	5.9

[fol. 32s]

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1960, see table 6 for this State in *U. S. Census of Population: 1960*, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1960 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
ALBANY COUNTY	272,426	239,386	221,315
Albany city	129,726	134,995	130,577
Berne town	1,542	1,348	1,325
Bethlehem town	18,936	13,065	9,782
Coeymans town	5,622	4,713	4,536
Ravena village[1]	2,410	2,006	1,810
Cohoes city	20,129	21,272	21,935
Colonie town	52,760	29,522	20,631
Colonie village[1]	6,992	2,068	1,407
Menands village[1]	2,314	2,453	1,764
Green Island town	3,533	4,016	3,988
Green Island village	3,533	4,016	3,988
Guilderland town	16,710	7,284	5,522
Altamont village	1,365	1,127	890
Knox town	1,320	1,172	980
New Scotland town	3,818	3,936	3,302
Voorheesville village[1]	1,228	895	717
Rensselaerville town	1,232	1,310	1,285
Watervliet city	13,917	15,197	16,114
Westerlo town	1,681	1,936	1,938
ALLEGANY COUNTY	43,978	43,784	39,681
Alfred town	3,730	2,862	1,410
Alfred village	2,807	2,053	694
Allen town	306	347	416
Alma town	871	931	780
Almond town	1,373	1,331	1,234
Almond village (pt.)	665	636	511
Amity town	2,006	1,997	1,935
Belmont village	1,146	1,211	1,146
Andover town	1,801	1,973	1,996
Andover village	1,347	1,351	1,290
Angelica town	1,335	1,390	1,410
Angelica village	898	928	928
Belfast town	1,265	1,277	1,213
Birdsall town	160	249	308
Bolivar town	2,441	2,680	2,638
Bolivar village	1,405	1,490	1,344
Richburg village (pt.)	78	93	111
Burns town	1,238	1,185	1,187
Canaseraga village	730	693	698
Canaseraga town	1,911	1,845	1,089
Centerville town	491	543	559
Clarksville town	840	825	786
Cuba town	3,116	2,784	2,507
Cuba village	1,949	1,783	1,699
Friendship town	2,020	2,182	1,932
Friendship village	1,231	1,344	1,148
Genesee town	1,193	1,134	1,188
Granger town	429	455	484
Grove town	469	566	568
Hume town	1,724	1,660	1,377
Fillmore village	522	527	518
Independence town	1,004	1,053	1,110
New Hudson town	612	618	601
Rushford town	995	935	967
Scio town	1,513	1,511	1,193
Ward town	234	239	250
Wellsville town	8,278	8,355	7,641
Wellsville village[1]	5,967	6,402	5,042
West Almond town	293	320	390
Willing town	1,208	1,089	836
Wirt town	1,117	1,243	1,348
Richburg village (pt.)	415	421	453
BRONX COUNTY	1,424,815	1,451,277	1,394,711
Bronx Borough (pt. of New York City)	1,424,815	1,451,277	1,394,711
BROOME COUNTY	212,661	184,698	165,749
Barker town	1,683	1,436	1,223
Binghamton city[3]	75,941	80,674	78,309
Binghamton town	3,475	2,073	1,576
Chenango town	9,858	5,747	3,265
Colesville town	3,773	3,064	2,652
Conklin town	4,347	2,872	2,156
Dickinson town[3]	6,591	4,451	3,060
Delaware village	398	430	508
Glenville town	25,707	17,912	13,343
Scotia village	7,625	7,612	7,960
Niskayuna town	14,032	9,442	6,348
Princetown town	912	774	553
Rotterdam town	27,493	19,762	12,560
Rotterdam (U)	16,871	...	...
Schenectady city	81,682	91,785	87,549
SCHOHARIE COUNTY	22,616	22,703	20,812
Blenheim town	345	378	419
Broome town	517	635	768
Carlisle town	900	1,010	917
Cobleskill town	4,964	4,709	4,005
Cobleskill village	3,471	3,208	2,617
Conesville town	593	626	673
Esperance town	1,232	1,128	887
Esperance village	314	322	219
Fulton town	1,008	1,050	1,010
Gilboa town	782	943	1,061
Jefferson town	800	819	845
Middleburg town	2,437	2,460	2,113
Middleburg village	1,317	1,298	1,074
Richmondville town	1,746	1,728	1,503
Richmondville village	743	709	598
Schoharie town	3,063	2,777	2,417
Schoharie village	1,168	1,099	941
Seward town	1,210	1,224	1,146
Sharon town	1,405	1,463	1,476
Sharon Springs village	351	361	433
Summit town	704	850	790
Wright town	910	903	788
SCHUYLER COUNTY	15,044	14,182	12,979
Catharine town	1,605	1,399	1,284
Odessa village (pt.)[31]	530	526	426
Cayuta town	538	459	311
Dix town	3,916	3,871	3,739
Montour Falls village (pt.)	...	5	...
Watkins Glen village (pt.)	2,438	2,682	2,644
Hector town	3,209	3,129	2,949
Burdett village	420	432	408
Montour town	2,182	1,985	1,774
Montour Falls village (pt.)	1,533	1,452	1,345
Odessa village (pt.)[31]	43	...	...
Orange town	1,047	890	693
Reading town	1,410	1,373	1,205
Watkins Glen village (pt.)	375	370	269
Tyrone town	1,137	1,076	1,024
SENECA COUNTY	31,984	29,253	25,732
Covert town	1,965	1,843	1,633
Interlaken village	780	770	661
Fayette town	2,825	2,557	2,383
Waterloo village (pt.)	703	678	620
Junius town	871	846	738
Lodi town	1,287	1,118	1,051
Lodi village	396	362	366
Ovid town	3,097	3,442	3,200
Ovid village (pt.)[32]	762	646	578
Romulus town	3,509	4,263	2,865
Ovid village (pt.)[32]	27	...	...
Seneca Falls town	9,264	7,845	7,352
Seneca Falls village	7,439	6,634	6,452
Tyre town	815	729	724
Varick town	1,480	1,086	1,056
Waterloo town	6,891	5,534	4,730
Waterloo village (pt.)	4,395	3,760	3,390
STEUBEN COUNTY	97,691	91,439	84,927
Addison town	2,645	2,368	2,032
Addison village	2,185	1,920	1,617
Avoca town	2,041	1,755	1,789
Avoca village[33]	1,086	952	1,006
Bath town	11,978	10,926	9,354
Bath village	6,166	5,416	4,696
Savona village	906	869	653
Bradford town	558	510	486
Cameron town	587	688	664
Campbell town	2,471	1,814	1,472
Canisteo town	3,652	3,568	3,381
Canisteo village	2,731	2,625	2,550
Caton town	1,359	1,199	976
Cohocton town	2,451	2,418	2,474
Cohocton village	929	943	931
Corning city[33]	17,085	17,684	16,212
Corning town[33]	6,732	4,275	3,152
Riverside village[33]	1,030	818	663
South Corning village[33]	1,448	880	681
Almond village (pt.)	31	23	22
Arkport village	837	701	618
North Hornell village	917	605	589
Howard town	939	902	893
Jasper town	1,008	983	967
Lindley town	1,313	1,043	961
Prattsburg town	1,448	1,353	1,364
Prattsburg village	690	613	635
Pulteney town	1,106	1,138	957
Rathbone town	726	741	699
Thurston town	619	719	607
Troupsburg town	1,074	1,092	1,131
Tuscarora town	1,043	989	859
Urbana town	2,592	2,430	2,322
Hammondsport village[33]	1,176	1,190	1,112
Wayland town	3,383	3,178	3,078
Wayland village	2,003	1,834	1,795
Wayne town	715	581	577
West Union town	430	504	630
Wheeler town	766	653	690
Woodhull town	1,224	1,255	1,292
Woodhull village	321	332	339
SUFFOLK COUNTY	666,784	276,129	197,355
Babylon town	142,309	45,556	26,297
Amityville village	8,318	6,164	5,058
Babylon village	11,062	6,015	4,742
Copiague (U)	14,081	...	...
Deer Park (U)	16,726	...	...
Lindenhurst village	20,905	8,644	4,796
Brookhaven town	109,900	44,522	32,117
Belle Terre village	295	120	89
Bellport village	2,461	1,449	650
Centereach (U)	8,524	...	...
Center Moriches (U)	2,521	1,761	...
East Moriches (U)	1,210	...	...
East Setauket (U)	1,127	...	...
Farmingville (U)	2,134	...	...
Holbrook (U) (pt.)	2,309	...	...
Lake Ronkonkoma (U) (pt.)	2,158	...	...
Mastic Beach (U)	3,005	1,079	...
Mastic Shirley (U)	3,397	...	...
Old Field village	373	238	123
Patchogue village[34]	8,838	7,361	7,181
Poquott village	295	136	73
Port Jefferson (U)	2,336	3,296	...
Port Jefferson Station (U)	1,041	...	...
Rocky Point (U)	2,261	...	...
Ronkonkoma (U)	4,220	...	...
Selden (U)	1,604	1,743	...
Setauket (U)	1,207	...	...
Shoreham village[34]	164	90	25
Sound Beach (U)	1,625	...	...
Stony Brook (U)	3,548	...	...
East Hampton town	8,827	6,329	6,528
Amagansett (U)	1,095	...	...
East Hampton village	1,772	1,737	1,726
Freetown (U)	1,365	...	...
Sag Harbor village (pt.)	874	915	932
Huntington town	126,221	47,506	31,768
Asharoken village	253	116	48
Centerport (U)	3,628	...	...
Cold Spring Harbor (U)	1,705	...	...
Commack (U) (pt.)	6,247	...	...
East Northport (U)	8,381	3,842	...
Greenlawn (U)	5,422	1,000	...
Halesite (U)	2,857	...	...
Huntington (U)	11,255	9,324	...
Huntington Bay village	1,267	585	408
Huntington Station (U)	23,438	9,924	...
Lloyd Harbor village	2,521	945	603
Northport village	5,972	3,859	3,093
South Huntington (U)	7,084	1,274	...
Vernon Valley (U)	5,998	...	...
Islip town	172,959	71,465	51,182
Brentwood (U)	15,387	2,803	...
Brightwaters village	3,193	2,336	1,562
Holbrook (U) (pt.)	1,052	...	...
Lake Ronkonkoma (U) (pt.)	1,577	...	...
Ocean Beach village	111	73	81
Ronkonkoma West (U)	1,446	...	...
Saltaire village	28	21	22
Lake Ronkonkoma (U) (pt.)	1,106	...	...
Nesconset (U)	1,964	...	...
Nissequogue village	332	219	188
St. James (U)	3,524	1,390	...
San Remo (U)	11,996	...	...
Smithtown Branch (U)	1,986	1,424	...
Village of the Branch village	886	163	185
Southampton town	26,861	16,830	15,295
Flanders (U)	1,248	...	...
Hampton Bays (U)	1,431	1,269	...
North Haven village	430	153	131
Quogue village	692	623	633
Sag Harbor village (pt.)	1,472	1,458	1,365
Southampton village	4,582	4,042	3,818
Westhampton Beach village	1,460	1,087	969
Southold town	13,295	11,632	12,046
Greenport village	2,608	3,028	3,259
Mattituck (U)	1,274	1,08	...
Shinnecock Indian Reservation	234	183	156
SULLIVAN COUNTY	45,272	40,731	37,901
Bethel town	2,366	2,351	2,321
Callicoon town	2,176	2,134	2,092
Jeffersonville village	434	450	403
Cochecton town	1,070	1,136	1,189
Delaware town	2,141	2,085	1,934
Fallsburgh town	6,748	6,321	5,682
South Fallsburgh (U)	1,290	1,147	...
Woodridge village	1,034	951	854
Forestburg town	356	364	389
Fremont town	1,067	1,170	1,251
Highland town	1,138	1,140	1,038
Liberty town	8,676	7,979	7,235
Liberty village[33]	4,704	4,658	3,788
Lumberland town	538	494	490
Mamakating town	3,356	2,632	2,407
Bloomingburgh village	303	263	197
Wurtsboro village	655	628	487
Neversink town	1,565	1,465	1,494
Rockland town	4,216	3,502	3,305
Livingston Manor (U)	2,080	...	...
Thompson town	8,792	6,912	6,054
Monticello village[33]	5,222	4,223	3,737
Tusten town	1,087	1,042	950
TIOGA COUNTY	37,802	30,166	27,072
Barton town	8,365	8,017	7,166
Waverly village	5,950	6,037	5,450
Berkshire town	953	912	861
Candor town	3,488	2,879	2,601
Candor village	956	802	661
Newark Valley town	2,880	2,384	2,210
Newark Valley village	1,234	1,027	949
Nichols town	1,998	1,685	1,481
Nichols village	863	578	541
Owego town	14,710	9,941	8,717
Owego village	5,417	5,350	5,068
Richford town	804	787	794
Spencer town	1,290	1,561	1,462
Spencer village	761	694	615
Tioga town	2,814	2,000	1,782
TOMPKINS COUNTY	66,164	39,122	42,340
Caroline town	2,118	1,900	1,737
Danby town	2,099	1,555	1,253
Dryden town	7,353	5,806	3,947
Dryden village	1,263	976	747
Freeville village	471	373	379
Enfield town	1,573	1,316	1,082
Groton town	4,469	4,266	3,879
Groton village	2,123	2,150	2,087
Ithaca city[34]	28,799	29,257	19,730
Ithaca town[34]	9,072	7,282	3,821
Cayuga Heights village[34]	2,788	1,131	651
Lansing town	4,221	3,195	2,786
Newfield town	2,193	1,891	1,521
Ulysses town	4,307	3,474	2,584
Trumansburg village	1,768	1,479	1,130
ULSTER COUNTY	118,804	92,621	87,017
Denning town	215	233	300
Esopus town	6,597	4,738	4,220
Port Ewen (U)	2,622	1,885	...
Gardiner town	1,660	1,289	1,317

[fol. 32l]

[fol. 32m]

32 W

Green Island village	3,533	4,016	3,988
Guilderland town	16,710	7,284	5,522
Altamont village	1,365	1,127	890
Knox town	1,320	1,172	960
New Scotland town	5,818	3,456	3,302
Voorheesville village[1]	1,228	895	717
Rensselaerville town	1,232	1,310	1,285
Watervliet city	13,917	15,197	16,114
Westerlo town	1,681	1,536	1,338
ALLEGANY COUNTY	43,978	43,784	39,681
Alfred town	3,730	2,862	1,410
Alfred village	2,807	2,053	694
Allen town	306	347	416
Alma town	871	931	780
Almond town	1,373	1,331	1,234
Almond village (pt.)	665	636	511
Amity town	2,006	1,997	1,935
Belmont village	1,146	1,211	1,146
Andover town	1,801	1,773	1,996
Andover village	1,247	1,351	1,290
Angelica town	1,335	1,390	1,410
Angelica village	898	928	928
Belfast town	1,265	1,277	1,213
Birdsall town	160	249	306
Bolivar town	2,441	2,680	2,628
Bolivar village	1,405	1,490	1,344
Richburg village (pt.)	78	99	111
Burns town	1,238	1,185	1,187
Canaseraga village	530	693	698
Canadea town	1,911	1,845	1,089
Centerville town	491	543	559
Clarksville town	840	828	766
Cuba town	3,116	2,784	2,307
Cuba village	1,949	1,783	1,699
Friendship town	2,020	2,182	1,932
Friendship village	1,231	1,344	1,148
Genesee town	1,193	1,134	1,188
Granger town	429	455	484
Grove town	469	566	568
Hume town	1,729	1,660	1,977
Fillmore village	522	527	518
Independence town	1,004	1,053	1,110
New Hudson town	612	618	601
Rushford town	995	935	967
Scio town	1,513	1,511	1,353
Ward town	234	239	250
Wellsville town	8,278	8,555	7,641
Wellsville village[1]	5,967	6,402	5,942
West Almond town	293	320	390
Willing town	1,208	1,089	836
Wirt town	1,117	1,243	1,348
Richburg village (pt.)	415	421	453
BRONX COUNTY	1,424,815	1,451,277	1,394,711
Bronx Borough (pt. of New York City)	1,424,815	1,451,277	1,394,711
BROOME COUNTY	212,661	184,698	165,749
Barker town	1,683	1,456	1,223
Binghamton city[1]	75,941	80,674	78,309
Binghamton town	3,475	2,073	1,376
Chenango town	9,858	5,747	3,263
Colesville town	3,773	3,064	2,652
Conklin town	4,347	2,872	2,156
Dickinson town[1]	6,591	5,450	5,060
Port Dickinson village	2,295	2,199	2,436
Fenton town	5,920	4,168	2,732
Kirkwood town	4,651	2,997	2,1[illegible]
Lisle town	1,587	1,334	1,317
Lisle village	335	306	342
Maine town	3,731	2,315	2,076
Nanticoke town	794	627	346
Sanford town	2,489	2,416	2,502
Deposit village (pt.)	1,187	1,134	1,252
Triangle town	2,019	1,733	1,375
Whitney Point village	1,049	882	733
Union town	64,423	55,676	50,195
Endicott village	18,775	20,050	17,702
Johnson City village	19,118	19,249	18,034
Vestal town	16,806	8,902	5,710
Windsor town	4,393	2,974	2,625
Windsor village	1,026	822	766
Boston town	596	727	643
East Otto town	701	743	732
Elko town	73	95	125
Ellicottville town	1,968	1,830	1,790
Ellicottville village	1,150	1,073	1,034
Farmersville town	721	733	778
Franklinville town	3,090	3,055	2,762
Franklinville village	2,124	2,092	1,884
Freedom town	1,059	1,031	947
Great Valley town	1,408	1,375	1,215
Hinsdale town	1,538	1,240	1,079
Humphrey town	415	367	424
Ischua town	562	622	503
Leon town	808	738	755
Little Valley town	1,737	1,724	1,401
Little Valley village	1,244	1,287	1,234
Lyndon town	406	409	391
Machias town	1,390	1,341	1,362
Mansfield town	632	672	620
Napoli town	670	619	570
New Albion town	1,981	1,894	1,747
Cattaraugus village	1,258	1,190	1,145
Olean city	21,868	22,884	21,506
Olean town	2,268	1,800	1,432
Otto town	715	685	642
Perrysburg town	1,897	1,907	1,805
Perrysburg village	434	361	375
Persia town	2,756	2,615	2,671
Cowanda village (pt.)[2]	2,273	2,221	2,206
Portville town	3,321	3,029	2,993
Portville village	1,336	1,151	1,018
Randolph town	2,513	2,535	2,206
East Randolph village (pt.)	393	413	322
Randolph village	1,414	1,455	1,321
Red House town	235	234	299
Salamanca city	8,480	8,861	9,011
Salamanca town	432	355	313
South Valley town	205	238	240
Yorkshire town	2,012	1,633	1,410
Delevan village[2]	777	611	534
Allegany Indian reservation	1,059	1,131	1,151
Cattaraugus Indian reservation (pt.)	262	215	205
CAYUGA COUNTY	73,942	70,136	65,908
Auburn city	35,249	36,722	35,753
Aurelius town	2,600	2,039	1,342
Cayuga village	621	534	472
Brutus town	2,804	2,348	2,188
Weedsport village	1,731	1,588	1,343
Cato town	1,815	1,513	1,458
Cato village (pt.)	138	119	127
Meridian village	379	334	307
Conquest town	1,170	1,103	890
Fleming town	2,071	1,502	1,259
Genoa town	1,794	1,672	1,425
Ira town	1,448	1,473	1,336
Cato village (pt.)	338	312	285
Ledyard town	1,646	1,577	1,322
Aurora village	834	711	372
Locke town	982	811	748
Mentz town	2,105	1,783	1,677
Port Byron village	1,201	1,013	961
Montezuma town	743	769	746
Moravia town	2,406	2,279	1,910
Moravia village	1,575	1,480	1,231
Niles town	943	941	834
Owasco town	3,409	2,543	2,100
Melrose Park (U)	2,058	...	...
Scipio town	1,143	1,202	1,104
Sempronius town	548	572	526
Sennett town	2,283	1,730	1,664
Springport town	1,700	1,534	1,418
Union Springs village	1,066	957	905
Sterling town	2,495	2,050	1,943
Fair Haven village	764	628	471
Summerhill town	667	542	505
Throop town	1,559	1,251	1,083
Venice town	1,203	1,026	1,125
Victory town	1,159	1,154	1,152
CHAUTAUQUA COUNTY	145,377	135,189	123,580
Arkwright town	700	665	688
Busti town	7,766	5,806	4,336
Lakewood village	3,933	3,013	2,314
Carroll town	2,661	2,286	2,386
Frewsburg (U)	1,423	1,383	...
Chautauqua town	1,[illegible]	887	672
Ellery town	3,953	2,852	2,088
Bemus Point village	443	424	290
Ellicott town	10,451	9,265	8,041
Celoron village	1,507	1,555	1,349
Falconer village[3]	3,343	3,292	3,222
Ellington town	1,314	1,142	1,073
French Creek town	906	817	694
Gerry town	1,468	1,347	1,073
Sinclairville village (pt.)	97	110	86
Hanover town	7,301	6,375	5,846
Forestville village	905	786	692
Silver Creek village	3,310	3,068	3,067
Harmony town	1,797	1,736	1,473
Panama village	450	436	374
Jamestown city	41,818	43,354	42,638
Kiantone town	1,254	976	849
Mina town	1,188	1,012	818
North Harmony town	2,132	1,675	1,453
Poland town	2,036	1,949	1,625
Pomfret town	11,459	9,596	7,782
Fredonia village	8,477	7,093	5,738
Portland town	3,605	3,339	2,965
Brocton village	1,416	1,380	1,293
Ripley town	2,848	2,694	2,250
Ripley (U)	1,247	1,229	...
Sheridan town	2,539	2,037	1,826
Sherman town	1,311	1,611	1,101
Sherman village	873	861	675
Stockton town	2,156	1,889	1,631
Cassadaga village	820	676	514
Villenova town	969	888	877
Westfield town	5,488	5,001	4,638
Westfield village	3,878	3,663	3,434
Cattaraugus Indian reservation (pt.)	19	13	27
CHEMUNG COUNTY	98,706	86,827	73,738
Ashland town	1,273	1,188	951
Wellsburg village	643	638	560
Baldwin town	735	557	457
Big Flats town	3,665	2,460	1,832
Catlin town	1,[illegible]	690	715
Chemung town	1,842	1,553	1,363
Elmira city[4]	46,517	49,716	45,106
Elmira town[4]	8,413	6,346	5,290
Elmira Heights village (pt.)	1,374	1,263	1,269
West Elmira (U)	5,763	3,833	...
Erin town	1,175	930	789
Horseheads town	17,808	11,118	8,804
Elmira Heights village (pt.)	3,783	3,746	3,560
Horseheads village[4]	7,207	3,606	2,970
Victory Heights (U)	2,528	1,857	...
Southport town	11,433	9,164	5,774
Elmira Southeast (U)	6,698	...	...
Van Etten town	1,285	1,249	1,055
Van Etten village	507	504	440
Veteran town	2,729	1,856	1,582
Millport village	425	362	340
CHENANGO COUNTY	43,243	39,138	36,454
Afton town	2,245	2,047	1,848
Afton village	936	875	806
Bainbridge town	3,177	2,706	2,410
Bainbridge village	1,712	1,505	1,450
Columbus town	706	655	711
Coventry town	859	796	722
German town	253	245	234
Greene town	4,624	3,712	3,188
Greene village	2,051	1,628	1,431
Guilford town	2,368	2,283	1,884
Lincklaen town	364	341	397
McDonough town	639	709	675
New Berlin town	2,633	2,359	2,112
New Berlin village	1,262	1,178	999
North Norwich town	1,096	875	770
Norwich city	9,175	8,816	8,694
Norwich town	2,587	1,738	1,296
Otselic town	854	896	905
Oxford town	3,457	3,423	3,121
Oxford village	1,871	1,811	1,713
Pharsalia town	515	480	676
Pitcher town	650	636	643
Plymouth town	1,004	858	792
Preston town	753	676	672

See footnotes at end of table, p. 20.

[fol. 32t]

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1950, see table 6 for this State in *U. S. Census of Population: 1950*, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1950 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
MONTGOMERY COUNTY--Con.			
Palatine town	2,556	2,529	2,420
Nellstone village	729	693	638
Palatine Bridge village	578	592	585
Root town	1,263	1,214	1,106
St. Johnsville town	2,958	2,934	2,974
St. Johnsville village	2,196	2,210	2,283
NASSAU COUNTY	1,300,171	672,765	406,748
Glen Cove city	23,817	15,130	12,415
Hempstead town	740,738	432,506	299,318
Baldwin (U)	30,204	...	...
Bellerose village	1,083	1,134	1,317
Bellmore (U)	12,784	...	...
Cedarhurst village[28]	6,954	6,051	5,463
East Meadow (U)	46,036	...	...
East Rockaway village[28]	10,721	7,970	5,610
Elmont (U)	30,138	...	...
Floral Park village (pt.)[28]	15,121	12,183	10,769
Franklin Square (U)	32,483	...	...
Freeport village[28]	34,419	24,680	20,410
Garden City village (pt.)[28]	23,946	14,368	11,223
Hempstead village[28]	34,641	29,135	20,856
Hewlett Bay Park village	520	466	438
Hewlett Harbor village	1,610	411	228
Hewlett Neck village	507	369	252
Inwood (U)	10,362	...	...
Island Park village	3,846	2,031	1,331
Lawrence village	5,907	4,681	3,849
Levittown (U)	65,276	...	...
Lynbrook village	19,881	17,314	14,397
Malverne village[28]	9,968	8,086	5,153
Merrick (U)	18,789	...	...
Mineola village (pt.)	68	27	...
New Hyde Park village (pt.)	4,429	2,747	2,171
North Bellmore (U)	19,639	...	...
North Merrick (U)	12,976	...	...
North Valley Stream (U)	17,239	...	...
Oceanside (U)	30,488	...	...
Rockville Centre village[28]	26,355	22,362	18,613
Roosevelt (U)	12,883	...	...
Seaford (U)	14,718	...	...
South Floral Park village	1,090	572	310
South Westbury (U)	11,977	...	...
Stewart Manor village[28]	2,422	1,879	1,625
Uniondale (U)	20,041	...	...
Valley Stream village	38,678	26,854	16,679
Wantagh (U)	34,172	...	...
West Hempstead-Lakeview (U)	24,793	...	...
Woodmere (U)	16,011	...	...
Woodsburgh village	907	745	702
Long Beach city	26,473	15,286	9,026
North Hempstead town	219,088	142,613	83,345
Baxter Estates village	932	862	790
East Hills village	7,184	2,547	343
East Williston village	2,940	1,734	1,152
Floral Park village (pt.)	2,379	2,399	2,181
Flower Hill village	4,594	1,968	666
Garden City village (pt.)	2	118	...
Garden City Park-Herricks (U)	15,364	...	...
Great Neck village[28]	10,171	7,799	6,167
Great Neck Estates village	3,262	2,466	1,969
Great Neck Plaza village	4,949	4,266	2,031
Kensington village[28]	1,166	978	933
Kings Point village[28]	5,410	2,445	1,267
Lake Success village[28]	2,954	1,264	203
Manorhaven village	3,566	1,319	484
Mineola village (pt.)[28]	20,451	14,804	10,064
Munsey Park village	2,847	2,048	1,456
New Hyde Park village (pt.)	6,379	4,602	2,520
North Hills village[28]	359	330	295
North New Hyde Park (U)	17,929	...	...
Old Westbury village (pt.)	1,756	940	817
Plandome village	1,374	1,102	897
Plandome Heights village	1,025	887	317
Plandome Manor village	705	329	262
Port Washington (U)	15,657	...	...
Port Washington North village[28]	722	650	628
Roslyn village	2,681	1,642	972
Roslyn Estates village	1,289	612	464
Roslyn Harbor village (pt.)	634	316	233
Russell Gardens village	1,434	910	466
New Paltz town	3,841	3,749	2,815
New Paltz village[29]	3,041	2,285	1,492
Olive town	1,999	1,463	1,320
Plattekill town	3,009	2,215	2,082
Rochester town	3,012	2,532	2,434
Rosendale town	4,228	2,950	2,548
Rosendale village	1,033	883	671
Saugerties town	13,608	9,232	8,960
Saugerties village	4,286	3,907	3,916
Shandaken town	2,078	1,887	1,875
Pine Hill village	180	233	242
Shawangunk town	4,604	3,561	3,117
Wallkill (U)	1,215	1,145	...
Ulster town	8,448	4,411	3,993
Lake Katrine (U)	1,149	...	...
Lincoln Park (U)	2,707	1,527	...
Wawarsing town	11,243	9,912	9,260
Ellenville village[29]	5,003	4,225	4,000
Woodstock town	3,836	2,271	1,983
WARREN COUNTY	44,002	39,205	36,035
Bolton town	1,417	1,184	1,310
Caldwell town	2,429	1,621	1,467
Lake George village	1,026	1,005	803
Chester town	1,974	1,927	1,825
Glens Falls city	18,580	19,610	18,836
Hague town	771	761	739
Horicon town	833	791	850
Johnsburg town	2,250	2,076	2,000
Luzerne town	1,830	1,426	1,251
Queensbury town	10,004	5,907	4,199
West Glens Falls (U)	2,725	1,665	...
Stony Creek town	499	479	457
Thurman town	348	329	335
Warrensburg town	2,907	2,894	2,566
Warrensburg (U)	2,240	2,356	...
WASHINGTON COUNTY	48,476	47,144	44,726
Argyle town	1,898	1,801	1,611
Argyle village	355	351	226
Cambridge town	1,610	1,567	1,434
Cambridge village (pt.)	519	546	511
Dresden town	426	433	502
Easton town	1,681	1,649	1,691
Greenwich village (pt.)	322	334	309
Fort Ann town	3,124	3,122	3,653
Fort Ann village	453	463	439
Fort Edward town	6,523	6,213	5,716
Fort Edward village	3,737	3,797	3,620
Granville town	5,015	5,116	5,508
Granville village	2,715	2,826	3,173
Greenwich town	3,949	3,811	3,766
Greenwich village (pt.)	1,941	1,878	1,961
Hampton town	469	576	594
Hartford town	1,058	1,271	1,088
Hebron town	1,026	1,134	1,228
Jackson town	795	857	798
Kingsbury town	11,012	9,503	8,697
Hudson Falls village	7,752	7,236	6,654
Putnam town	490	534	534
Salem town	2,841	2,815	2,815
Argyle village[29]	1,041	1,492	1,492
Whitehall town	3,009	2,215	2,082
Whitehall village	2,196	2,210	2,283
WAYNE COUNTY	35,452	30,943	29,674
Arcadia town	15,836	12,816	12,108
Newark village[29]	12,868	10,293	9,646
Butler town	1,441	1,429	1,411
Wolcott village (pt.)	293	232	170
Galen town	4,419	4,036	3,858
Clyde village	2,693	2,492	2,356
Huron town	1,356	1,409	1,412
Lyons town	6,147	5,379	5,076
Lyons village	4,673	4,217	3,863
Macedon town	3,617	2,560	2,277
Macedon village	645	614	557
Marion town	2,785	2,412	2,240
Ontario town	4,259	3,297	2,851
Palmyra town	6,179	4,934	4,337
Palmyra village	3,476	3,034	2,709
Rose town	2,122	2,013	1,882
Savannah town	1,667	1,494	1,456
Savannah village	602	562	601
Sodus town	6,509	5,706	5,162
Sodus Point village[29]	868	...	...
Sodus village[29]	1,645	1,588	1,513
Walworth town	2,782	2,336	1,956
Williamson town	5,294	4,226	3,700
Williamson (U)	1,690	1,520	...
Wolcott town	3,498	3,276	3,021
Red Creek village	689	617	539
Wolcott village (pt.)	1,368	1,284	1,156
WESTCHESTER COUNTY	808,891	625,816	573,558
Bedford town	14,656	10,888	9,248
Mount Kisco village (pt.)	2,580	2,417	2,441
Cortlandt town	26,336	14,146	11,016
Buchanan village	2,019	1,820	1,600
Croton-on-Hudson village	7,812	4,837	3,843
Eastchester town	33,613	27,174	23,492
Bronxville village	6,744	6,778	6,888
Tuckahoe village	6,423	5,991	6,569
Greenburgh town	76,213	47,527	40,145
Ardsley village[29]	3,991	1,744	1,423
Dobbs Ferry village	9,260	6,268	5,883
Elmsford village	3,795	3,147	3,078
Hastings-on-Hudson village	8,979	7,565	7,037
Irvington village	5,494	3,697	3,272
Tarrytown village	11,109	8,851	6,874
Harrison town	19,201	13,977	11,783
Lewisboro town	4,165	2,352	1,929
Mamaroneck town	29,107	25,103	22,260
Larchmont village	6,789	6,330	5,970
Mamaroneck village (pt.)[29]	10,555	8,851	7,822
Mount Pleasant town	34,955	26,022	24,138
Briarcliff Manor village (pt.)	535	402	383
North Tarrytown village[29]	8,818	8,740	8,804
Pleasantville village[29]	5,877	4,861	4,454
Mount Vernon city	76,010	71,899	67,362
New Castle town	14,388	8,802	7,903
Mount Kisco village (pt.)	4,225	3,490	3,500
New Rochelle city	76,812	59,725	58,408
North Castle town	6,797	3,855	3,306
North Salem town	2,343	1,622	1,194
Peekskill town	2,573	1,234	806
Rye city	14,225	11,721	9,865
Rye town	38,147	32,796	40,135
Mamaroneck village (pt.)	7,118	6,165	5,212
Port Chester village	24,960	23,970	23,073
Scarsdale town	17,968	13,156	12,966
Scarsdale village	17,968	13,156	12,966
Somers town	5,468	3,139	2,406
Lake Shenrock (U)	1,402	...	...
White Plains city	50,485	43,466	40,327
Yonkers city	190,634	152,798	142,598
Yorktown town	16,453	4,731	3,642
Shrub Oak (U)	1,874	...	...
Yorktown (U)	3,376	...	...
Yorktown Heights (U)	2,478	...	...
WYOMING COUNTY	34,793	32,822	31,394
Arcade town	2,861	2,970	2,387
Arcade village	1,930	1,818	1,683
Attica town	5,781	5,722	5,477
Attica village (pt.)[16]	2,758	2,676	2,379
Bennington town	1,983	1,558	1,481
Castile town	2,609	2,361	2,172
Castile village	1,146	1,072	902
Perry village (pt.)	424	348	304
Covington town	827	789	698
Eagle town	896	868	922
Gainesville town	2,032	2,121	1,923
Gainesville village	369	314	283
Silver Springs village	726	830	766
Genesee Falls town	397	436	413
Java town	1,797	1,455	1,364
Middlebury town	1,416	1,248	1,123
Wyoming village	526	508	430
Orangeville town	633	648	699
Perry town	5,372	5,342	5,251
Perry village (pt.)	4,205	4,185	4,164
Pike town	878	885	838
Pike village	345	286	307
Sheldon town	1,898	1,618	1,578
Warsaw town	4,803	4,585	4,452
Warsaw village	3,653	3,713	3,554
Wethersfield town	650	616	616
YATES COUNTY	18,614	17,615	16,381
Barrington town	754	771	782
Benton town	2,092	1,866	1,879
Penn Yan village (pt.)	351	384	279
Italy town	428	455	457
Jerusalem town	2,847	2,732	2,063
Penn Yan village (pt.)	87	7	...
Middlesex town	817	765	764
Milo town	6,965	6,576	6,377
Penn Yan village (pt.)[41]	5,332	5,090	5,029
Potter town	1,106	1,157	1,109
Rushville village (pt.)	306	324	307
Starkey town	2,597	2,345	2,205
Dundee village	1,468	1,165	1,168
Torrey town	1,007	948	765
Dresden village	437	373	257

[1] ALBANY.—Part of Coeymans town annexed to Ravena village. Parts of Colonie town annexed to Colonie and Menands villages. Part of New Scotland town annexed to Voorheesville village.

[2] ALLEGANY.—Part of Wellsville town annexed to Wellsville village.

[3] BROOME.—Part of Dickinson town annexed to Binghamton city and part of Binghamton city detached and area annexed to Dickinson town.

[4] CATTARAUGUS.—Part of Allegany town annexed to Allegany village. Part of Persia town annexed to Gowanda village. Part of Yorkshire town annexed to Delevan village.

[5] CHAUTAUQUA.—Part of Chautauqua town annexed to Mayville village. Part of Dunkirk town annexed to Dunkirk city. Part of Ellicott town annexed to Falconer village.

[6] CHEMUNG.—Part of Elmira town annexed to Elmira city. Part of Horseheads town annexed to Horseheads village.

[7] DELAWARE.—Downsville village disincorporated and area reverted to Colchester town. Part of Sidney town annexed to Sidney village.

[8] DUTCHESS.—Part of Northeast town annexed to Millerton village. Part of Wappinger town annexed to Wappingers Falls village.

[9] ERIE.—Part of Amherst town annexed to Williamsville village. Parts of Hamburg town annexed to Blasdell and Hamburg villages. Part of Newstead town annexed to Akron village. Part of Orchard Park town annexed to Orchard Park village.

[10] ESSEX.—Part of St. Armand town annexed to Saranac Lake village.

[11] FRANKLIN.—Part of Burke village detached and area reverted to Burke town. Part of Malone town annexed to Malone village.

[12] GENESEE.—Parts of Alexander town annexed to Attica and Alexander villages. Part of Batavia town annexed to Batavia city. Part of Oakfield town annexed to Oakfield village.

[13] HERKIMER.—Part of Little Falls town annexed to Little Falls city.

[14] JEFFERSON.—Part of Adams town annexed to Adams village. Part of Le Ray town annexed to Evans Mills village. Part of Watertown town annexed to Watertown city.

[15] LEWIS.—Part of Lowville town annexed to Lowville village.

[16] LIVINGSTON.—Part of Caledonia town annexed to Caledonia village. Part of Lima town annexed to Lima village. Part of Livonia town annexed to Livonia village. Part of North Dansville town annexed to Dansville village.

[17] MADISON.—Part of Hamilton town annexed to Hamilton village. Part of Lenox town annexed to Canastota village. Parts of Sullivan town annexed to Chittenango village.

[18] MONROE.—Parts of Irondequoit, Brighton, Greece, Gates, and Chili towns annexed to Rochester city. Part of Rochester city annexed to Chili town. Part of Clarkson town annexed to Brockport village. Part of Ogden town annexed to Spencerport village. Parts of Perinton and Pittsford towns annexed to East Rochester village. Part of Perinton town annexed to Fairport village. Part of Riga town annexed to Churchville village. Part of Webster town annexed to Webster village. Part of Wheatland town annexed to Scottsville village.

[19] MONTGOMERY.—Part of Canajoharie town annexed to Canajoharie village.

[20] NASSAU.—Parts of Hempstead town annexed to Cedarhurst, East Rockaway, Floral Park, Freeport, Garden City, Hempstead, Hewlett Harbor, Malverne, and Rockville Centre villages. Parts of Garden City village detached and area annexed to Stewart Manor and Hempstead villages and parts of Stewart Manor and Hempstead villages detached and area annexed to Garden City village. Parts of North Hempstead town annexed to Kensington, Lake Success, Mineola, North Hills, and Port Washington North villages and part of North Hills village detached and area reverted to North Hempstead town. Part of Kensington village detached and area annexed to Thomaston village. Part of Kings Point village detached and area annexed to Great Neck village. Parts of Oyster Bay town annexed to Bayville, Brookville, Laurel Hollow, and Mattontown villages.

[21] NIAGARA.—Part of Lockport town annexed to Lockport city. Parts of Niagara town annexed to Niagara Falls city. Part of Porter town annexed to Youngstown village. Part of Royalton town annexed to Middleport village. Part of Somerset town annexed to Barker village. Part of Wilson town annexed to Wilson village. Tonawanda Indian Reservation returned in Erie and Genesee Counties only in 1950.

[fol. 32x]

66

Hempstead town	440,738	432,506	259,318
Baldwin (U)	30,204	...	...
Bellerose village	1,083	1,134	1,117
Bellmore (U)	12,784	...	...
Cedarhurst village[20]	6,954	6,051	5,463
East Meadow (U)	46,036	...	...
East Rockaway village[20]	10,721	7,970	5,610
Elmont (U)	30,138	...	...
Floral Park village (pt.)[20]	15,121	12,183	10,769
Franklin Square (U)	32,483	...	...
Freeport village[20]	34,419	26,680	20,410
Garden City village (pt.)[20]	23,946	14,368	11,223
Hempstead village[20]	34,641	29,135	20,856
Houlett Bay Park village	520	466	438
Houlett Harbor village[20]	1,610	411	228
Houlett Neck village	307	369	252
Inwood (U)	10,362	...	...
Island Park village	3,846	2,031	1,531
Lawrence village	5,907	4,681	3,649
Levittown (U)	69,776	...	...
Lynbrook village	19,881	17,314	14,557
Malverne village[20]	9,968	8,084	5,153
Merrick (U)	18,289	...	...
Mineola village (pt.)	68	27	...
New Hyde Park village (pt.)	4,429	2,747	2,171
North Bellmore (U)	19,639	...	...
North Merrick (U)	12,976	...	...
North Valley Stream (U)	17,239	...	...
Oceanside (U)	30,488	...	...
Rockville Centre village[20]	26,355	22,362	18,613
Roosevelt (U)	12,683	...	...
Seaford (U)	14,718	...	...
South Floral Park village	1,090	572	510
South Westbury (U)	11,977	...	...
Stewart Manor village[20]	2,422	1,879	1,625
Uniondale (U)	20,041	...	...
Valley Stream village	38,692	26,854	16,679
Wantagh (U)	34,172	...	...
West Hempstead-Lakeview (U)	26,793	...	...
Woodmere (U)	14,011	...	...
Woodsburgh village	907	745	702
Long Beach city	26,473	15,389	9,036
North Hempstead town	219,088	142,613	83,385
Baxter Estates village	932	862	760
East Hills village	7,184	2,347	363
East Williston village	2,940	1,734	1,152
Floral Park village (pt.)	2,378	2,399	2,181
Flower Hill village	4,594	1,446	696
Garden City village (pt.)	2	118	...
Garden City Park-Herricks (U)	15,364	...	...
Great Neck village[20]	10,171	7,759	6,167
Great Neck Estates village	3,262	2,464	1,969
Great Neck Plaza village	4,945	4,246	2,031
Kensington village[20]	1,166	978	933
Kings Point village[20]	3,410	2,445	1,267
Lake Success village[20]	2,954	1,284	203
Manorhaven village	3,566	1,319	484
Mineola village (pt.)[20]	22,451	14,804	10,064
Munsey Park village	2,847	2,048	1,456
New Hyde Park village (pt.)	6,379	4,602	2,320
North Hills village[20]	359	330	295
North New Hyde Park (U)	17,929	...	...
Old Westbury village (pt.)	1,756	940	817
Plandome village	1,379	1,102	997
Plandome Heights village	1,025	882	317
Plandome Manor village	705	329	302
Port Washington (U)	15,657	...	...
Port Washington North village[20]	722	650	628
Roslyn village	2,681	1,612	772
Roslyn Estates village	1,289	612	464
Roslyn Harbor village (pt.)	834	316	233
Russell Gardens village	1,159	912	556
Saddle Rock village	1,109	33	69
Sands Point village	2,161	860	628
Thomaston village[20]	42,767	2,045	1,159
Westbury village	14,739	7,112	4,426
Williston Park village	8,255	7,505	5,750
Oyster Bay town	290,358	66,930	42,994
Bayville village[20]	3,962	1,981	1,516
Bethpage-Old Bethpage (U)	20,515	...	...
Brookville village[20]	1,668	377	274
Centre Island village	270	199	134
Cove Neck village	299	203	130
East Massapequa (U)	14,779	...	...
Farmingdale village	6,128	4,492	3,524
Hicksville (U)	50,605	...	...
Old Brookville village	1,126	644	356
Old Westbury village (pt.)	308	220	200
Oyster Bay Cove village	988	561	466
Plainedge (U)	21,973	...	...
Plainview (U)	27,710	...	...
Roslyn Harbor village (pt.)	127	86	70
Sea Cliff village	5,669	4,868	4,416
South Farmingdale (U)	16,318	...	...
Upper Brookville village	1,045	469	456
NEW YORK COUNTY	1,698,281	1,960,101	1,889,924
Manhattan Borough (pt. of New York City)	1,698,281	1,960,101	1,889,924
NIAGARA COUNTY	242,269	189,992	160,110
Cambria town	3,661	2,346	1,925
Hartland town	3,377	2,849	2,527
Middleport village (pt.)	142	125	129
Lewiston town	13,686	6,921	4,448
Lewiston village	3,320	1,526	1,280
Lockport city[21]	26,443	25,133	24,379
Lockport town[21]	6,492	3,945	3,160
Newfane town	8,523	5,801	4,635
Newfane (U)	1,423	1,378	...
Olcott (U)	1,215	...	...
Niagara town[21]	7,303	4,729	2,618
Niagara Falls city[21]	102,394	90,872	78,029
North Tonawanda city	34,757	24,731	20,254
Pendleton town	3,589	1,815	1,316
Porter town	7,309	4,276	3,361
Youngstown village[21]	1,868	932	799
Royalton town	6,585	5,297	4,617
Middleport village (pt.)[21]	1,740	1,516	1,446
Somerset town	2,489	2,227	2,061
Barker village[21]	528	523	462
Wheatfield town	8,008	4,720	3,077
Wilson town	5,319	3,696	3,061
Wilson village[21]	1,320	962	849
Tonawanda Indian Reservation (pt.)[21]	...	...	...
Tuscarora Indian Reservation	1,934	634	462
ONEIDA COUNTY	264,401	222,855	203,636
Annsville town	1,635	1,333	1,217
Augusta town	2,021	1,833	1,900
Oriskany Falls village	972	893	930
Ava town	518	452	520
Boonville town	3,786	3,393	3,301
Boonville village	2,403	2,329	2,076
Bridgewater town	966	806	743
Bridgewater village	373	304	238
Camden town	4,318	3,655	3,096
Camden village	2,694	2,407	2,021
Deerfield town	3,554	1,621	1,147
Florence town	583	510	620
Floyd town	2,234	1,014	828
Forestport town	821	723	730
Kirkland town	7,978	6,104	5,211
Clark Mills (U)	1,148	...	...
Clinton village	1,855	1,630	1,478
Lee town	4,302	1,856	1,482
Marcy town	7,024	5,210	4,528
Marshall town	1,902	1,616	1,541
Waterville village (pt.)	288	270	243
New Hartford town	18,444	11,071	8,109
New Hartford village[22]	2,468	1,947	1,914
New York Mills village (pt.)[22]	1,605	1,380	1,352
Paris town	4,219	3,459	3,093
Clayville village	686	719	711
Sauquoit (U)	2,715	1,227	...
Remsen town	1,128	962	798
Remsen village (pt.)	539	454	394
Rome city	51,646	41,682	34,214
Sangerfield town	2,482	2,143	1,961
Waterville village (pt.)	1,613	1,364	1,269
Steuben town	586	540	581
Trenton town	3,417	2,522	2,099
Holland Patent village	538	430	389
Prospect village	368	318	284
Remsen village (pt.)	28	29	28
Trenton village	363	331	296
Utica city[22]	100,410	101,531	100,518
Vernon town	7,140	5,397	5,124
Oneida Castle village	754	596	556
Sherrill city[22]	2,922	2,230	2,184
Vernon village[22]	913	754	583
ONONDAGA COUNTY	423,028	341,719	295,108
Camillus town	18,328	6,735	4,394
Camillus village[23]	1,416	1,225	1,133
Cicero town	14,725	5,956	4,366
North Syracuse village (pt.)	2,261	1,233	928
Clay town	17,760	7,001	4,050
North Syracuse village (pt.)[23]	5,151	2,125	1,115
De Witt town	22,740	15,329	10,836
East Syracuse village	4,708	4,766	4,320
Elbridge town	4,644	3,338	2,975
Elbridge village[23]	828	586	497
Jordan village	1,390	1,295	1,115
Fabius town	1,565	1,432	1,346
Fabius village	378	369	308
Geddes town	19,679	13,284	11,237
Solvay village	8,732	7,868	8,201
Lafayette town	3,379	2,083	1,550
Lysander town	10,225	6,798	5,207
Baldwinsville village (pt.)[23]	3,696	2,712	2,243
Manlius town	19,351	10,221	7,845
Fayetteville village[23]	4,311	2,624	2,172
Manlius village	1,997	1,742	1,520
Minoa village	1,838	1,008	902
Marcellus town	4,527	3,607	3,046
Marcellus village	1,697	1,382	1,112
Onondaga town[23]	15,429	9,351	6,985
Otisco town	1,188	975	873
Pompey town	3,469	2,531	2,099
Salina town	33,076	19,125	11,168
Liverpool village[23]	3,487	2,933	2,500
Skaneateles town	6,603	5,193	4,639
Skaneateles village	2,921	2,331	1,949
Spafford town	974	829	742
Syracuse city[23]	216,038	220,583	205,967
Tully town	1,633	1,554	1,430
Tully village	803	744	719
Van Buren town	8,754	4,900	3,691
Baldwinsville village (pt.)	2,289	1,783	1,597
Onondaga Indian Reservation	941	894	762
ONTARIO COUNTY	68,070	60,172	55,307
Bristol town	1,002	915	750
Canadice town	558	303	324
Canandaigua city	9,370	8,332	8,321
Canandaigua town	4,894	4,218	3,083
East Bloomfield town	2,297	1,848	1,700
East Bloomfield village[24]	488	425	365
Holcomb village	460	313	304
Farmington town	2,114	1,399	1,453
Geneva city[24]	17,286	17,144	15,595
Geneva town[24]	2,603	1,771	1,436
Gorham town	2,664	2,354	2,027
Rushville village (pt.)	159	141	121
Hopewell town	1,822	1,506	1,456
Manchester town	6,242	5,755	5,252
Clifton Springs village (pt.)	1,495	1,483	1,092
Manchester village	1,344	1,262	1,330
Shortsville village	1,382	1,314	1,316
Naples town	1,955	1,906	1,972
Naples village	1,237	1,141	1,153
Phelps town	5,825	4,890	4,425
Clifton Springs village (pt.)	455	375	320
Phelps village	1,887	1,650	1,499
Richmond town	1,384	959	897
Seneca town	2,698	2,535	1,970
South Bristol town	617	542	581
Victor town	3,295	2,840	2,477
Victor village	1,180	1,066	1,111
West Bloomfield town	1,444	1,155	1,068
ORANGE COUNTY	183,734	152,255	140,113
Blooming Grove town	3,777	2,410	2,312
Washingtonville village[25]	1,178	823	801
Chester town	3,434	2,878	2,776
Chester village[25]	1,492	1,215	1,140
Cornwall town	8,094	6,154	5,299
Cornwall village	2,785	2,211	1,978
Cornwall Southwest (U)	2,824	...	...
Crawford town	2,574	2,410	1,786
Pine Bush (U)	1,016	...	...

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1950, see table 6 for this State in *U. S. Census of Population:* 1950, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1960 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
ORANGE COUNTY—Con.			
Deerpark town	2,777	2,519	2,227
Goshen town	6,835	5,832	5,697
Goshen village[28]	3,906	3,311	3,073
Greenville town	890	737	732
Hamptonburgh town	1,695	1,272	1,086
Maybrook village (pt.)[28]	18	...	...
Highlands town	11,990	10,467	9,307
Highland Falls village[28]	4,469	3,930	3,711
Middletown city[25]	23,475	22,586	21,908
Minisink town	1,433	1,367	1,343
Unionville village	511	454	387
Monroe town	5,965	3,714	3,302
Harriman village (pt.)	718	658	678
Monroe village[28]	3,143	1,753	1,616
Montgomery town	11,672	9,868	8,418
Maybrook village (pt.)[28]	1,330	1,316	1,189
Montgomery village[28]	1,312	1,063	844
Walden village	4,851	4,599	4,262
Mount Hope town	2,291	2,298	1,817
Otisville village	896	911	889
Newburgh city	30,979	31,956	31,883
Newburgh town	15,547	8,686	6,092
Balmville (U)	1,538	...	...
Glenwood Park (U)	1,317	...	...
Winona Lakes (U)	1,655	...	...
New Windsor town	11,908	5,100	3,765
New Windsor (U)	4,041	2,754	...
Port Jervis city	9,268	9,372	9,749
Tuxedo town	2,227	2,281	2,314
Tuxedo Park village[28]	723	...	...
Wallkill town[29]	8,176	5,947	4,753
East Middletown (U)	1,752	1,485	...
Washington Heights (U)	1,231	...	...
Warwick town	12,551	9,828	9,369
Florida village	1,550	1,376	...
Greenwood Lake village	1,236	819	681
Warwick village[28]	3,218	2,674	2,534
Wawayanda town	3,229	2,435	2,218
Woodbury town	2,887	2,138	1,960
Harriman village (pt.)	14	18	25
ORLEANS COUNTY	34,159	29,832	27,760
Albion town	6,416	6,007	5,965
Albion village (pt.)	4,898	4,663	4,506
Barre town	1,922	1,623	1,345
Carlton town	2,600	1,775	1,540
Clarendon town	1,659	1,287	1,176
Gaines town	2,090	1,812	1,667
Albion village (pt.)	284	187	154
Kendall town	1,680	1,343	1,341
Murray town	3,767	3,200	2,764
Holley village	1,788	1,551	1,230
Ridgeway town	6,911	6,217	5,826
Medina village (pt.)[28]	4,010	3,798	3,555
Shelby town	5,051	4,482	3,961
Medina village (pt.)	2,671	2,381	2,316
Yates town	2,063	2,086	1,975
Lyndonville village	755	777	745
OSWEGO COUNTY	86,118	77,181	71,275
Albion town	1,125	1,036	1,094
Altmar village	277	299	304
Amboy town	524	482	493
Boylston town	293	302	365
Constantia town	2,730	1,947	1,538
Cleveland village	732	555	440
Fulton city[27]	14,261	13,922	13,362
Granby town[27]	3,704	2,775	2,220
Hannibal town	2,673	2,230	2,010
Hannibal village	611	501	437
Hastings town	4,457	3,063	2,361
Central Square village	935	665	568
Mexico town	3,435	3,034	2,710
Mexico village	1,465	1,398	1,348
Minetto town	1,290	1,025	1,052
New Haven town	1,478	1,259	1,194
Orwell town	663	752	806
Oswego city	22,135	22,647	22,062
Oswego town	2,796	2,106	1,972
Palermo town	1,663	1,397	1,148
Parish town	1,439	1,264	1,199
Parish village	567	574	521
Redfield town	388	418	517
[illegible]	[illegible]	947	1,[illegible]
OTSEGO COUNTY	51,942	50,763	48,082
Burlington town	809	959	956
Butternuts town	1,352	1,315	1,369
Gilbertsville village	522	456	377
Cherry Valley town	1,156	1,330	1,274
Cherry Valley village	668	760	704
Decatur town	254	279	324
Edmeston town	1,721	1,563	1,580
Exeter town	923	924	760
Hartwick town	1,400	1,473	1,438
Laurens town	1,498	1,447	1,395
Laurens village	291	261	203
Maryland town	1,386	1,556	1,460
Schenevus village	493	568	472
Middlefield town	1,376	1,481	1,992
Cooperstown village (pt.)	97	63	73
Milford town	2,055	1,913	1,666
Milford village	548	502	460
Morris town	1,525	1,440	1,376
Morris village	677	641	599
New Lisbon town	812	877	801
Oneonta city	13,412	13,564	11,731
Oneonta town	4,068	3,508	2,673
West End (U)	1,436	1,283	...
Otego town	2,008	1,769	1,508
Otego village	875	699	580
Otsego town	4,121	4,304	4,074
Cooperstown village (pt.)	2,456	2,664	2,526
Pittsfield town	880	850	796
Plainfield town	764	729	670
Richfield town	2,662	2,339	1,970
Richfield Springs village	1,630	1,534	1,209
Roseboom town	518	570	534
Springfield town	1,121	1,184	1,135
Unadilla town	3,649	2,689	2,277
Unadilla village	1,586	1,317	1,079
Westford town	526	602	685
Worcester town	1,946	2,098	2,098
PUTNAM COUNTY	31,722	20,307	16,555
Carmel town	9,113	5,458	4,195
Mahopac (U)	1,337	...	...
Kent town	3,924	2,146	1,546
Lake Carmel (U)	2,735	...	...
Patterson town	2,853	2,075	1,328
Philipstown town	5,918	4,332	4,246
Cold Spring village	2,083	1,788	1,897
Nelsonville village	555	522	457
Putnam Valley town	3,070	1,908	1,187
Southeast town	6,844	4,388	4,053
Brewster village	1,714	1,810	1,863
QUEENS COUNTY	1,809,578	1,550,849	1,297,634
Queens Borough (pt. of New York City)	1,809,578	1,550,849	1,297,634
RENSSELAER COUNTY	142,585	132,607	121,834
Berlin town	1,329	1,409	1,402
Brunswick town	9,004	5,967	4,917
East Greenbush town	9,107	6,338	4,550
East Greenbush (U)	1,325	...	...
Grafton town	1,009	964	836
Hoosick town	6,490	6,520	6,549
Hoosick Falls village	4,023	4,297	4,279
Nassau town	3,721	3,122	2,605
Nassau village	1,248	952	698
North Greenbush town	8,161	4,913	3,223
Petersburg town	989	1,010	955
Pittstown town	2,973	2,666	2,491
Valley Falls village (pt.)	490	473	489
Poestenkill town	2,493	1,799	1,438
Rensselaer city	10,806	10,856	10,761
Sand Lake town	4,629	3,254	2,488
Schaghticoke town	5,269	4,019	3,246
Schaghticoke village	720	687	603
Valley Falls village (pt.)	99	82	75
Schodack town	8,052	6,164	5,081
Castleton-on-Hudson village	1,752	1,751	1,515
Stephentown town	1,361	1,295	1,181
Troy city	67,492	72,311	70,304
RICHMOND COUNTY	221,991	191,555	174,441
Richmond Borough (pt. of New York City)	221,991	191,555	174,441
ROCKLAND COUNTY—Con.			
Orangetown town	43,172	34,554	26,662
Grand View-on-Hudson village[28]	330	302	588
Nyack village (pt.)	6,010	5,889	5,206
Piermont village	1,906	1,897	1,876
South Nyack village	3,113	3,102	2,093
Ramapo town	35,064	20,584	18,007
Hillburn village[28]	1,114	1,212	1,161
Sloatsburg village	2,565	2,018	1,771
Spring Valley village (pt.)[28]	5,881	4,930	4,308
Suffern village[28]	5,094	4,010	3,768
Stony Point town	8,739	5,485	4,898
Stony Point (U)	3,330	1,438	...
ST. LAWRENCE COUNTY	111,239	98,897	91,098
Brasher town	2,536	1,916	1,892
Canton town	8,935	7,652	6,230
Canton village	5,046	4,379	3,018
Rensselaer Falls village	375	323	265
Clare town	87	107	139
Clifton town	1,306	1,382	1,005
Colton town	1,195	960	1,096
De Kalb town	2,137	2,063	2,116
Richville village	292	254	274
De Peyster town	759	642	768
Edwards town	1,366	1,426	1,410
Edwards village	658	584	624
Fine town	2,391	1,875	1,208
Fowler town	1,722	1,602	1,772
Gouverneur town	6,737	6,506	5,900
Gouverneur village[28]	4,946	4,916	4,478
Hammond town	1,076	1,251	1,260
Hammond village	314	329	373
Hermon town	1,255	1,350	1,147
Hermon village	612	547	487
Hopkinton town	1,032	935	1,044
Lawrence town	1,785	1,625	1,431
Lisbon town	3,040	2,597	2,633
Louisville town	2,520	1,825	1,589
Massena village (pt.)[28]	92	...	...
Macomb town	881	848	891
Madrid town	1,623	1,551	1,383
Massena town	17,730	14,862	12,979
Massena village (pt.)	15,386	...	...
Morristown town	1,776	1,569	1,635
Morristown village	541	546	540
Norfolk town	4,590	3,481	3,427
Norfolk (U)	1,353	1,252	...
Norwood village (pt.)	44	79	83
Ogdensburg city[28]	16,122	16,166	16,346
Oswegatchie town[28]	2,836	2,363	2,193
Heuvelton village	810	712	620
Parishville town	1,473	1,245	1,309
Pierrefield town	420	554	667
Pierrepont town	1,523	1,192	1,312
Pitcairn town	647	569	521
Potsdam town	14,045	12,437	9,609
Norwood village (pt.)[28]	2,156	1,916	1,822
Potsdam village	7,765	7,491	4,821
Rossie town	649	611	706
Russell town	1,588	1,472	1,529
Stockholm town	3,465	2,558	2,406
Norwood village (pt.)	...	...	...
Waddington town	1,972	1,745	1,645
Waddington village	921	819	671
SARATOGA COUNTY	89,096	74,869	65,606
Ballston town	5,752	3,969	2,630
Ballston Spa village (pt.)	844	803	676
Charlton town	3,024	1,298	1,063
Clifton Park town	4,512	3,261	2,253
Corinth town	5,167	4,879	4,478
Corinth village	3,193	3,161	3,054
Day town	486	436	475
Edinburg town	602	530	534
Galway town	1,746	1,408	1,244
Galway village	309	188	161
Greenfield town	2,548	1,961	1,696
Hadley town	982	801	679
Halfmoon town	4,120	2,836	1,969
Malta town	2,223	1,882	1,354
Mechanicville city	6,831	7,385	7,449
Milton town	7,114	6,294	5,768
Ballston Spa (pt.)	4,142	4,134	3,767

Unionville village	511	454	387
Monroe town	5,965	3,714	3,302
Harriman village (pt.)	718	638	678
Monroe village[23]	3,343	1,753	1,616
Montgomery town	11,672	9,868	8,418
Maybrook village (pt.)[23]	1,330	1,316	1,189
Montgomery village[23]	1,312	1,063	844
Walden village	4,851	4,559	4,262
Mount Hope town	2,291	2,298	1,817
Otisville village	896	911	889
Newburgh city	30,979	31,956	31,883
Newburgh town	15,547	8,686	6,092
Balmville (V)	1,538	...	...
Glenwood Park (V)	1,317	...	...
Winona Lakes (V)	1,655	...	...
New Windsor town	11,908	5,100	3,765
New Windsor (V)	4,041	2,754	...
Port Jervis city	9,268	9,372	9,749
Tuxedo town	2,227	2,281	2,314
Tuxedo Park village[23]	723	...	...
Wallkill town[23]	8,176	5,947	4,753
East Middletown (V)	1,752	1,485	...
Washington Heights (V)	1,231	...	...
Warwick town	12,551	9,628	9,369
Florida village	1,550	1,376	...
Greenwood Lake village	1,236	819	483
Warwick village[23]	3,218	2,674	2,534
Wawayanda town	3,229	2,435	2,218
Woodbury town	2,887	2,138	1,960
Harriman village (pt.)	34	18	29
ORLEANS COUNTY	34,159	29,832	27,760
Albion town	6,416	6,007	5,965
Albion village (pt.)	4,898	4,663	4,506
Barre town	1,922	1,623	1,545
Carlton town	2,600	1,775	1,540
Clarendon town	1,659	1,287	1,176
Gaines town	2,090	1,812	1,667
Albion village (pt.)	284	187	154
Kendall town	1,680	1,343	1,341
Murray town	3,767	3,200	2,764
Holley village	1,788	1,551	1,230
Ridgeway town	6,911	6,217	5,826
Medina village (pt.)[24]	4,010	3,798	3,555
Shelby town	5,051	4,482	3,961
Medina village (pt.)	2,671	2,381	2,316
Yates town	2,063	2,086	1,975
Lyndonville village	755	777	745
OSWEGO COUNTY	86,118	77,181	71,275
Albion town	1,125	1,036	1,094
Altmar village	277	299	304
Amboy town	524	482	493
Boylston town	293	302	365
Constantia town	2,730	1,947	1,538
Cleveland village	732	595	440
Fulton city[27]	14,261	13,922	13,362
Granby town[27]	3,704	2,775	2,220
Hannibal town	2,673	2,230	2,010
Hannibal village	611	501	437
Hastings town	4,477	3,063	2,361
Central Square village	935	665	568
Mexico town	3,435	3,035	2,710
Mexico village	1,465	1,398	1,348
Minetto town	1,290	1,025	1,052
New Haven town	1,478	1,259	1,194
Orwell town	663	752	806
Oswego city	22,155	22,647	22,062
Oswego town	2,796	2,106	1,972
Palermo town	1,663	1,397	1,148
Parish town	1,439	1,264	1,199
Parish village	567	574	521
Redfield town	388	418	317
Richland town	4,554	4,067	3,848
Pulaski village	2,256	2,033	1,895
Sandy Creek town	2,506	2,354	1,821
Lacona village	556	540	413
Sandy Creek village	697	708	646
Schroeppel town	5,554	4,037	3,219
Phoenix village	2,408	1,917	1,757
Sen'ca town	2,489	2,249	2,184
Volney town	3,785	3,106	2,659
West Monroe town	1,417	1,002	731
Williamstown town	739	707	710

See footnotes at end of table, p. 21.

Laurens town	1,498	1,447	1,395
Laurens village	291	261	203
Maryland town	1,386	1,556	1,460
Schenevus village	493	568	472
Middlefield town	1,376	1,481	1,592
Cooperstown village (pt.)	97	83	73
Milford town	2,055	1,913	1,666
Milford village	548	502	460
Morris town	1,525	1,440	1,376
Morris village	677	641	599
New Lisbon town	812	877	801
Oneonta city	13,412	13,564	11,731
Oneonta town	4,068	3,508	2,673
West End (U)	1,436	1,285	...
Otego town	2,008	1,769	1,508
Otego village	875	699	580
Otsego town	4,121	4,304	4,074
Cooperstown village (pt.)	2,456	2,664	2,526
Pittsfield town	880	850	796
Plainfield town	764	729	670
Richfield town	2,662	2,339	1,970
Richfield Springs village	1,630	1,534	1,209
Roseboom town	518	570	534
Springfield town	1,121	1,184	1,135
Unadilla town	3,649	2,689	2,277
Unadilla village	1,386	1,317	1,079
Westford town	526	602	685
Worcester town	1,946	2,098	2,038
PUTNAM COUNTY	31,722	20,307	16,555
Carmel town	9,113	5,458	4,195
Mahopac (U)	1,337	...	...
Kent town	3,924	2,246	1,546
Lake Carmel (U)	2,735	...	...
Patterson town	2,853	2,075	1,328
Philipstown town	5,918	4,332	4,246
Cold Spring village	2,083	1,788	1,897
Nelsonville village	555	522	457
Putnam Valley town	3,070	1,908	1,187
Southeast town	6,844	4,388	4,053
Brewster village	1,714	1,810	1,863
QUEENS COUNTY	1,809,578	1,550,849	1,297,634
Queens Borough (pt. of New York City)	1,809,578	1,550,849	1,297,634
RENSSELAER COUNTY	142,585	132,607	121,834
Berlin town	1,329	1,409	1,402
Brunswick town	9,004	5,967	4,917
East Greenbush town	9,107	6,338	4,550
East Greenbush (U)	1,325	...	...
Grafton town	1,009	964	836
Hoosick town	6,490	6,520	6,549
Hoosick Falls village	4,023	4,297	4,279
Nassau town	3,721	3,122	2,405
Nassau village	1,248	952	698
North Greenbush town	8,161	4,913	3,223
Petersburg town	989	1,010	955
Pittstown town	2,973	2,666	2,491
Valley Falls village (pt.)	490	473	489
Poestenkill town	2,493	1,799	1,438
Rensselaer city	10,506	10,856	10,768
Sand Lake town	4,629	3,254	2,488
Schaghticoke town	5,269	4,019	3,246
Schaghticoke village	720	687	603
Valley Falls village (pt.)	99	82	75
Schodack town	8,052	6,164	5,081
Castleton-on-Hudson village	1,752	1,751	1,515
Stephentown town	1,361	1,295	1,181
Troy city	67,492	72,311	70,304
RICHMOND COUNTY	221,991	191,555	174,441
Richmond Borough (pt. of New York City)	221,991	191,555	174,441
ROCKLAND COUNTY	136,802	89,276	74,261
Clarkstown town	33,196	15,674	12,251
Nyack village (pt.)[28]	52	...	...
Spring Valley village (pt.)[24]	657	...	...
Upper Nyack village[28]	1,833	1,195	924
Haverstraw town	16,632	12,979	12,443
Haverstraw village	5,771	5,818	5,909
West Haverstraw village[28]	5,020	3,099	2,533

(pt.)[28]	5,881	4,500	4,308
Suffern village[28]	5,094	4,010	3,768
Stony Point town	8,739	5,485	4,898
Stony Point (U)	3,330	1,438	...
ST. LAWRENCE COUNTY	111,239	98,897	91,098
Brasher town	2,536	1,916	1,892
Canton town	8,939	7,652	6,130
Canton village	5,046	4,379	3,018
Rensselaer Falls village	375	323	265
Clare town	87	107	139
Clifton town	1,306	1,382	1,005
Colton town	1,195	960	1,096
De Kalb town	2,137	2,063	2,116
Richville village	292	234	274
De Peyster town	739	642	768
Edwards town	1,366	1,426	1,410
Edwards village	458	584	624
Fine town	2,391	1,875	1,208
Fowler town	1,722	1,602	1,772
Gouverneur town	6,757	6,506	5,900
Gouverneur village[28]	4,946	4,916	4,478
Hammond town	1,076	1,251	1,260
Hammond village	314	329	323
Hermon town	1,255	1,350	1,147
Hermon village	612	547	487
Hopkinton town	1,032	935	1,044
Lawrence town	1,785	1,625	1,431
Lisbon town	3,040	2,557	2,633
Louisville town	2,520	1,825	1,589
Massena village (pt.)[28]	92	...	...
Macomb town	881	848	891
Madrid town	1,623	1,551	1,383
Massena town	17,730	14,862	12,979
Massena village (pt.)	15,386	...	...
Morristown town	1,776	1,569	1,635
Morristown village	541	546	540
Norfolk town	4,590	3,481	3,427
Norfolk (U)	1,353	1,252	...
Norwood village (pt.)	44	79	82
Ogdensburg city[29]	16,122	16,166	16,346
Oswegatchie town[29]	2,836	2,363	2,193
Heuvelton village	810	712	620
Parishville town	1,473	1,243	1,309
Pierrefield town	420	554	667
Pierrepont town	1,523	1,192	1,312
Pitcairn town	647	569	521
Potsdam town	14,045	12,437	9,609
Norwood village (pt.)[28]	2,156	1,916	1,822
Potsdam village	7,765	7,491	4,821
Russia town	649	611	706
Russell town	1,588	1,472	1,529
Stockholm town	3,465	2,558	2,406
Norwood village (pt.)	...	...	...
Waddington town	1,972	1,743	1,645
Waddington village	921	819	671
SARATOGA COUNTY	89,096	74,869	65,606
Ballston town	5,752	3,969	2,630
Ballston Spa village (pt.)	844	803	676
Charlton town	3,024	1,298	1,063
Clifton Park town	4,512	3,283	2,253
Corinth town	5,167	4,879	4,478
Corinth village	3,193	3,161	3,054
Day town	466	436	475
Edinburg town	602	530	534
Galway town	1,746	1,408	1,244
Galway village	309	188	161
Greenfield town	2,548	1,961	1,696
Hadley town	982	801	679
Halfmoon town	4,120	2,836	1,969
Malta town	2,223	1,882	1,354
Mechanicsville city	6,831	7,385	7,449
Milton town	7,114	6,294	5,768
Ballston Spa village (pt.)	4,147	4,134	3,767
Moreau town	8,406	6,065	4,930
Fernwood (U)	2,108	...	...
South Glens Falls village[30]	4,129	3,645	3,081
Northumberland town	1,353	1,263	1,109
Providence town	556	369	409
Saratoga town	3,515	3,225	3,212
Schuylerville village	1,361	1,314	1,447
Victory village	477	388	520
Saratoga Springs city	16,630	15,473	13,705

82 V

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1960, see table 6 for this State in *U. S. Census of Population:* 1960, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1960 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
SARATOGA COUNTY—Con.			
Stillwater town	4,416	4,055	3,709
Stillwater village	1,398	1,276	971
Waterford town	7,231	6,092	5,709
Waterford village	2,915	2,968	2,903
Wilton town	1,902	1,407	1,231
SCHENECTADY COUNTY	152,896	142,497	122,494
Duanesburg town	3,070	2,822	2,141
Delanson village	398	430	326
Glenville town	25,707	17,912	13,343
Scotia village	7,625	7,812	7,960
Niskayuna town	14,032	9,442	6,348
Princetown town	912	774	553
Rotterdam town	27,493	19,762	12,560
Rotterdam (U)	16,871	...	...
Schenectady city	81,682	91,785	87,549
SCHOHARIE COUNTY	22,616	22,703	20,812
Blenheim town	345	378	415
Broome town	517	635	768
Carlisle town	900	1,010	917
Cobleskill town	4,964	4,709	4,005
Cobleskill village	3,471	3,208	2,617
Conesville town	593	626	673
Esperance town	1,232	1,128	887
Esperance village	314	322	219
Fulton town	1,008	1,050	1,010
Gilboa town	782	943	1,061
Jefferson town	800	819	845
Middleburg town	2,437	2,460	2,113
Middleburg village	1,317	1,298	1,074
Richmondville town	1,746	1,728	1,503
Richmondville village	743	709	598
Schoharie town	3,063	2,777	2,417
Schoharie village	1,168	1,059	941
Seward town	1,210	1,224	1,146
Sharon town	1,405	1,463	1,476
Sharon Springs village	351	361	433
Summit town	704	859	790
Wright town	910	903	786
SCHUYLER COUNTY	15,044	14,182	12,979
Catharine town	1,605	1,399	1,284
Odessa village (pt.)[34]	530	526	424
Cayuta town	538	459	311
Dix town	3,916	3,871	3,739
Montour Falls village (pt.)	...	5	...
Watkins Glen village (pt.)	2,438	2,682	2,644
Hector town	3,209	3,129	2,949
Burdett village	420	432	408
Montour town	2,182	1,985	1,774
Montour Falls village (pt.)	1,533	1,452	1,345
Odessa village (pt.)[34]	43	...	...
Orange town	1,047	890	693
Reading town	1,410	1,373	1,205
Watkins Glen village (pt.)	375	370	269
Tyrone town	1,137	1,076	1,024
SENECA COUNTY	31,984	29,253	25,732
Covert town	1,965	1,843	1,633
Interlaken village	780	770	661
Fayette town	2,825	2,557	2,383
Waterloo village (pt.)	703	678	620
Junius town	871	846	738
Lodi town	1,267	1,118	1,051
Lodi village	396	362	366
Ovid town	3,097	3,442	3,200
Ovid village (pt.)[33]	762	646	578
Romulus town	3,309	4,263	3,865
Ovid village (pt.)[33]	27	...	...
Seneca Falls town	9,264	7,845	7,352
Seneca Falls village	7,439	6,634	6,452
Tyre town	815	729	724
Varick town	1,480	1,086	1,056
Waterloo town	6,891	5,524	4,730
Waterloo village (pt.)	4,395	3,760	3,390
STEUBEN COUNTY	97,691	91,439	84,927
Addison town	2,645	2,368	2,032
Addison village	2,185	1,920	1,617
Avoca town[33]	2,041	1,755	1,789
Avoca village[33]	1,086	952	1,006
Bath town	11,978	10,926	9,354
STEUBEN COUNTY—Con.			
Dansville town	1,125	1,113	794
Erwin town[33]	5,829	4,393	3,716
Painted Post village[33]	2,370	2,405	2,337
Fremont town	779	782	739
Greenwood town	839	872	914
Hartsville town	479	518	498
Hornby town	1,383	1,014	837
Hornell city[33]	13,907	15,049	15,649
Hornellsville town[33]	3,413	2,912	2,761
Almond village (pt.)	31	23	22
Arkport village	837	701	618
North Hornell village	917	603	589
Howard town	929	902	893
Jasper town	1,008	983	967
Lindley town	1,313	1,043	961
Prattsburg town	1,448	1,353	1,364
Prattsburg village	690	653	635
Pulteney town	1,106	1,138	957
Rathbone town	726	741	699
Thurston town	619	719	607
Troupsburg town	1,074	1,092	1,131
Tuscarora town	1,043	989	859
Urbana town[33]	2,592	2,430	2,322
Hammondsport village[33]	1,176	1,190	1,112
Wayland town	3,385	3,178	3,078
Wayland village	2,003	1,834	1,795
Wayne town	715	581	577
West Union town	430	504	630
Wheeler town	766	653	690
Woodhull town	1,224	1,255	1,292
Woodhull village	321	332	339
SUFFOLK COUNTY	666,784	276,129	197,355
Babylon town	142,309	45,556	24,297
Amityville village	8,318	6,164	5,058
Babylon village	11,062	6,015	4,742
Copiague (U)	14,081	...	...
Deer Park (U)	16,726	...	...
Lindenhurst village	20,905	8,644	4,736
Brookhaven town	109,900	44,522	32,117[4]
Belle Terre village	295	120	89
Bellport village	2,461	1,449	650
Centereach (U)	8,524	...	...
Center Moriches (U)	2,521	1,761	...
East Moriches (U)	1,210	...	...
East Setauket (U)	1,127	...	...
Farmingville (U)	2,134	...	...
Holbrook (U) (pt.)	2,389	...	...
Lake Ronkonkoma (U) (pt.)	2,158	...	...
Mastic Beach (U)	3,035	1,079	...
Mastic Shirley (U)	3,397	...	...
Old Field village	373	238	123
Patchogue village[34]	8,838	7,361	7,181
Poquott village	295	136	73
Port Jefferson (U)	2,336	3,296	...
Port Jefferson Station (U)	1,041	...	...
Rocky Point (U)	2,261	...	...
Ronkonkoma (U)	4,220	...	...
Selden (U)	1,606	1,743	...
Setauket (U)	1,207	...	...
Shoreham village[34]	164	90	25
Sound Beach (U)	1,625	...	...
Stony Brook (U)	3,548	...	...
East Hampton town	8,827	6,329	6,529
Amagansett (U)	1,095	...	...
East Hampton village	1,772	1,737	1,756
Freetown (U)	1,365	...	...
Sag Harbor village (pt.)	874	915	952
Huntington town	126,221	47,506	31,768
Asharoken village	253	116	48
Centerport (U)	3,628	...	...
Cold Spring Harbor (U)	1,705	...	...
Commack (U) (pt.)	6,247	...	...
East Neck (U)	3,799	...	...
East Northport (U)	8,381	3,842	...
Greenlawn (U)	5,422	1,000	...
Halesite (U)	2,837	...	...
Huntington (U)	11,255	9,324	...
Huntington Bay village	1,267	585	408
SUFFOLK COUNTY—Con.			
Riverhead town	14,519	9,973	8,922
Riverhead (U)	5,830	4,892	...
Shelter Island town	1,312	1,144	1,073
Sag Harbor village	19	4	34
Smithtown town	30,347	20,993	13,970
Commack (U) (pt.)	3,366	...	...
Head of the Harbor village	324	334	255
Kings Park (U)	4,949	10,960	...
Lake Ronkonkoma (U) (pt.)	1,106	...	...
Nesconset (U)	1,964	...	...
Nissequogue village	332	219	188
St. James (U)	3,524	1,390	...
San Remo (U)	11,996	...	...
Smithtown Branch (U)	1,986	1,424	...
Village of the Branch village	886	163	185
Southampton town	26,861	16,830	15,295
Flanders (U)	1,249	...	...
Hampton Bays (U)	1,431	1,269	...
North Haven village	450	153	131
Quogue village	692	625	633
Sag Harbor village (pt.)	1,472	1,458	1,565
Southampton village	4,582	4,042	3,818
Westhampton Beach village	1,460	1,087	969
Southold town	13,293	11,632	12,066
Greenport village	2,608	3,028	3,259
Mattituck (U)	1,274	1,08	...
Shinnecock Indian Reservation	234	183	136
SULLIVAN COUNTY	45,272	40,731	37,901
Bethel town	2,366	2,351	2,321
Callicoon town	2,176	2,134	2,092
Jeffersonville village	434	450	403
Cochecton town	1,070	1,136	1,189
Delaware town	2,141	2,089	1,934
Fallsburgh town	6,748	6,321	5,682
South Fallsburgh (U)	1,290	1,147	...
Woodridge village	1,034	931	834
Forestburg town	356	384	389
Fremont town	1,047	1,170	1,251
Highland town	1,138	1,140	1,038
Liberty town	8,676	7,979	7,235
Liberty village[33]	4,704	4,658	3,788
Lumberland town	538	494	490
Mamakating town	3,356	2,632	2,407
Bloomingburgh village	303	263	197
Wurtsboro village	655	628	487
Neversink town	1,563	1,465	1,494
Rockland town	4,216	3,502	3,375
Livingston Manor (U)	2,080	...	...
Thompson town	8,792	6,912	6,054
Monticello village[33]	5,222	4,223	3,737
Tusten town	1,087	1,042	950
TIOGA COUNTY	37,802	30,166	27,072
Barton town	8,365	8,017	7,164
Waverly village	5,950	6,037	5,450
Berkshire town	953	912	861
Candor town	3,488	2,879	2,601
Candor village	956	802	661
Newark Valley town	2,880	2,384	2,210
Newark Valley village	1,234	1,027	949
Nichols town	1,998	1,685	1,681
Nichols village	663	578	541
Owego town	14,710	9,961	8,717
Owego village	5,417	5,350	5,068
Richford town	804	787	794
Spencer town	1,790	1,561	1,462
Spencer village	767	694	615
Tioga town	2,814	2,000	1,782
TOMPKINS COUNTY	66,164	59,122	42,340
Caroline town	2,118	1,900	1,737
Danby town	2,059	1,555	1,253
Dryden town	7,953	5,006	3,947
Dryden village	1,263	976	747
Freeville village	471	373	379
Enfield town	1,573	1,316	1,082
Groton town	4,469	4,246	3,879
Groton village	2,123	2,150	2,087

[fol. 32w]

Copiague (U)	Suffolk	14,081	...	...	Franklin Square (U)	Nassau	32,483	...	...
Corfu	Genesee	616	542	442	Franklinville	Cattaraugus	2,134	2,092	1,884
Corinth	Saratoga	3,193	3,141	3,054	Fredonia	Chautauqua	8,477	7,095	5,738
Corning	Steuben	17,085	17,684	16,212	Freeport	Nassau	34,419	24,680	20,410
Cornwall	Orange	2,785	2,211	1,978	Preston (U)	Suffolk	1,365	...	...
Cornwall Southeast (U)	Orange	2,824	...	...	Freeville	Tompkins	471	373	379
Cortland	Cortland	19,181	18,132	15,881	Frewsburg (U)	Chautauqua	1,623	1,383	...
Cove Neck	Nassau	299	200	130	Friendship	Allegany	1,231	1,344	1,148
Coxsackie	Greene	2,849	2,722	2,352	Fulton	Oswego	14,261	13,922	13,362
Croghan	Lewis	821	772	801	Fultonville	Montgomery	815	840	806
Croton-on-Hudson	Westchester	6,812	4,837	3,843	Gainesville	Wyoming	369	314	283
Cuba	Allegany	1,949	1,783	1,699	Galway	Saratoga	309	188	141
Dannemora	Clinton	4,835	4,122	4,830	Garden City	Nassau	23,948	14,486	11,223
Dansville	Livingston	5,480	5,253	4,976	Garden City Park-Herricks (U)	Nassau	15,364	...	...
Deer Park (U)	Suffolk	16,726	...	...	Geneseo	Livingston	5,284	2,838	2,144
Deferiet	Jefferson	470	416	620	Geneva	Ontario	17,286	17,144	15,555
Delanson	Schenectady	398	430	326	Gilbertsville	Otsego	522	456	377
Delevan	Cattaraugus	777	611	554	Glen Cove	Nassau	23,817	13,130	12,415
Delhi	Delaware	2,307	2,223	1,841	Glen Park	Jefferson	561	516	523
Depew	Erie	13,580	9,217	6,084	Glens Falls	Warren	18,580	19,420	18,836
Deposit	Broome / Delaware	2,025	2,016	2,028	Glenwood Park (U)	Orange	1,317	...	...
Derby Harbor	Suffolk	19	4	34	Gloversville	Fulton	21,741	23,634	22,329
De Ruyter	Madison	627	561	526	Goshen	Orange	3,906	3,311	3,073
Dexter	Jefferson	1,009	1,038	1,109	Gouverneur	St. Lawrence	4,946	4,916	4,478
Dobbs Ferry	Westchester	9,280	6,268	5,883	Gowanda	Cattaraugus / Erie	3,352	3,289	3,156
Dolgeville	Fulton / Herkimer	3,038	3,204	3,195	Grand View-on-Hudson	Rockland	330	302	388
Dresden	Yates	437	373	237	Granville	Washington	2,715	2,826	3,173
Dryden	Tompkins	1,263	976	747	Great Neck	Nassau	10,171	7,799	6,187
Dundee	Yates	1,468	1,165	1,168	Great Neck Estates	Nassau	3,262	2,464	1,969
Dunkirk	Chautauqua	18,205	18,007	17,713	Great Neck Plaza	Nassau	4,948	4,246	2,031
Earlville	Chenango / Madison	1,004	943	864	Greene	Chenango	2,051	1,628	1,431
East Aurora	Erie	6,791	5,962	5,253	Green Island	Albany	3,533	4,016	3,988
East Bloomfield	Ontario	488	425	365	Greenlawn (U)	Suffolk	5,422	1,000	...
East Greenbush (U)	Rensselaer	1,325	...	...	Greenport	Suffolk	2,608	3,028	3,259
East Hampton	Suffolk	1,772	1,737	1,756	Greenwich	Washington	2,363	2,212	2,270
East Herkimer (U)	Herkimer	1,068	...	...	Greenwood Lake	Orange	1,236	819	483
East Hills	Nassau	7,184	2,347	343	Groton	Tompkins	2,123	2,150	2,087
East Massapequa (U)	Nassau	14,779	...	...	Hagaman	Montgomery	1,292	1,114	933
East Meadow (U)	Nassau	46,036	...	...	Halesite (U)	Suffolk	2,837	...	...
East Middletown (U)	Orange	1,732	1,485	...	Hamburg	Erie	9,143	6,938	5,487
East Moriches (U)	Suffolk	1,210	...	...	Hamburg-Lake Shore (U)	Erie	11,527	...	...
East Neck (U)	Suffolk	3,789	...	...	Hamilton	Madison	3,348	3,307	1,790
East Northport (U)	Suffolk	8,381	3,842	...	Hammond	St. Lawrence	314	329	323
East Randolph	Cattaraugus	594	628	496	Hammondsport	Steuben	1,176	1,190	1,112
East Rochester	Monroe	8,132	7,022	6,691	Hampton Bays (U)	Suffolk	1,431	1,269	...
East Rockaway	Nassau	10,721	7,970	5,610	Hancock	Delaware	1,830	1,560	1,581
East Setauket (U)	Suffolk	1,127	...	...	Hannibal	Oswego	611	501	497
East Syracuse	Onondaga	4,708	4,766	4,320	Harriman	Orange	732	676	703
East Williston	Nassau	2,940	1,734	1,152	Harris Hill (U)	Erie	3,944	...	...
Eden (U)	Erie	2,366	1,394	...	Harrisville	Lewis	842	868	832
Edwards	St. Lawrence	638	584	624	Hastings-on-Hudson	Westchester	8,979	7,565	7,037
Eggertsville (U)	Erie	44,807	...	...	Haverstraw	Rockland	9,771	5,818	5,909
Elba	Genesee	739	569	614	Head of the Harbor	Suffolk	324	334	255
Elbridge	Onondaga	828	586	497	Hempstead	Nassau	34,641	29,135	20,856
Elizabethtown	Essex	779	665	640	Henrietta Northeast (U)	Monroe	6,403	...	...
Ellenville	Ulster	5,003	4,225	4,000	Herkimer	Herkimer	9,396	9,400	9,617
Ellicottville	Cattaraugus	1,150	1,073	1,024	Hermon	St. Lawrence	612	547	487
Ellisburg	Jefferson	328	283	253	Herrings	Jefferson	327[4]	192	232
Elmira	Chemung	46,517	49,716	45,106	Heuvelton	St. Lawrence	810	712	620
Elmira Heights	Chemung	5,137	5,009	4,829	Hewlett Bay Park	Nassau	320	466	438
Elmira Southeast (U)	Chemung	6,698	...	...	Hewlett Harbor	Nassau	1,610	411	228
Elmont (U)	Nassau	30,138	...	...	Hewlett Neck	Nassau	507	369	252
Elmsford	Westchester	3,795	3,147	3,078	Hicksville (U)	Nassau	50,405	...	...
Endicott	Broome	18,773	20,080	17,702	Highland (U)	Ulster	2,931	3,035	...
Esperance	Schoharie	314	322	219	Highland Falls	Orange	4,469	3,930	3,711
Evans Mills	Jefferson	618	518	523	Hillburn	Rockland	1,114	1,212	1,161
Fabius	Onondaga	378	369	308	Hilton	Monroe	1,334	1,036	893
Fair Haven	Cayuga	764	628	471	Hobart	Delaware	385	618	638
Fairport	Monroe	3,307	3,267	4,644	Holbrook (U)	Suffolk	3,441	...	...
Fairview (U)	Dutchess	8,626	1,721	...	Holcomb	Ontario	460	313	304
Falconer	Chautauqua	3,343	3,292	3,222	Holland Patent	Oneida	538	400	388
Farmingdale	Nassau	6,128	4,492	3,524	Holley	Orleans	1,788	1,581	1,230
Farmingville (U)	Suffolk	2,134	...	...	Homer	Cortland	3,622	3,244	2,928
Farnham	Erie	422	396	388	Honeoye Falls	Monroe	2,143	1,460	1,274
Fayetteville	Onondaga	4,311	2,624	2,172	Hoosick Falls	Rensselaer	4,023	4,297	4,279
Fernwood (U)	Saratoga	2,108	...	...	Hornell	Steuben	13,907	15,049	15,649
Fillmore	Allegany	522	527	518	Horseheads	Chemung	7,207	3,606	2,970
Fishkill	Dutchess	1,033	841	720	Hudson	Columbia	11,073	11,629	11,517
Flanders (U)	Suffolk	1,248	...	...	Hudson Falls	Washington	7,752	7,236	6,654
Fleischmanns	Delaware	490	469	546	Hunter	Greene	437	526	626
Floral Park	Nassau	17,499	14,382	12,930	Huntington (U)	Suffolk	11,255	9,324	...
Florida	Orange	1,550	1,376	...	Huntington Bay	Suffolk	1,267	585	408
					Huntington Station (U)	Suffolk	23,438	9,924	...

[fol. 32z]

[4] The revised population total for Herrings is 171. The figure in the table includes population for an area misclassified as inside, rather than outside, the village limits. This error was discovered too late for correction in the detailed distributions.

68

323

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

["U" denotes an unincorporated place. For changes in boundaries, etc., between 1940 and 1960, see table 6 for this State in *U. S. Census of Population: 1960*, Vol. I or II. Total population of a place located in 2 or more minor civil divisions appears in table 8. Minor civil division figures for 1950 and 1940 do not necessarily add to county totals]

County and minor civil division	1960	1950	1940
ULSTER COUNTY--Con.			
Hardenbergh town	252	284	326
Hurley town	4,526	1,980	1,530
Kingston city	29,260	26,817	28,589
Kingston town	490	227	196
Lloyd town	5,842	4,503	3,795
Highland (U)	2,931	3,035	...
Marbletown town	3,191	2,364	2,543
Marlborough town	4,863	4,003	3,794
Marlboro (U)	1,733	1,709	...
New Paltz town[32]	5,841	3,749	2,815
New Paltz village[32]	3,041	2,285	1,492
Olive town	1,999	1,463	1,320
Plattekill town	3,009	2,213	2,082
Rochester town	3,012	2,332	2,454
Rosendale town	4,228	2,930	2,548
Rosendale village	1,033	883	671
Saugerties town	13,608	9,232	8,960
Saugerties village	4,286	3,907	3,916
Shandaken town	2,078	1,887	1,875
Pine Hill village	180	233	242
Shawangunk town	4,604	3,561	3,117
Wallkill (U)	1,213	1,145	...
Ulster town	8,446	4,411	3,993
Lake Katrine (U)	1,149	...	...
Lincoln Park (U)	2,707	1,527	...
Wawarsing town[33]	11,245	9,912	9,240
Ellenville village[33]	5,003	4,225	4,000
Woodstock town	3,836	2,271	1,983
WARREN COUNTY	44,002	39,205	36,035
Bolton town	1,417	1,184	1,310
Caldwell town	2,429	1,621	1,467
Lake George village	1,026	1,005	803
Chester town	1,974	1,927	1,825
Glens Falls city	18,580	19,610	18,836
Hague town	771	761	739
Horicon town	833	791	850
Johnsburg town	2,250	2,076	2,000
Luzerne town	1,830	1,426	1,251
Queensbury town	10,004	5,907	4,199
West Glens Falls (U)	2,725	1,665	...
Stony Creek town	499	479	437
Thurman town	368	529	535
Warrensburg town	2,907	2,894	2,566
Warrensburg (U)	2,240	2,356	...
WASHINGTON COUNTY	48,476	47,144	46,726
Argyle town	1,898	1,801	1,611
Argyle village	355	351	226
Cambridge town	1,610	1,567	1,434
Cambridge village (pt.)	519	546	1,311
Dresden town	426	433	902
Easton town	1,681	1,659	1,691
Greenwich village (pt.)	322	334	309
Fort Ann town	3,134	3,122	3,653
Fort Ann village	453	463	439
Fort Edward town	6,523	6,213	5,716
Fort Edward village	3,737	3,797	3,620
Granville town	5,015	5,116	5,508
Granville village	2,715	2,826	3,173
Greenwich town	3,949	3,811	3,766
Greenwich village (pt.)	1,941	1,878	1,961
Hampton town	469	576	594
Hartford town	1,058	1,271	1,088
Hebron town	1,026	1,134	1,228
Jackson town	795	857	798
Kingsbury town	11,012	9,503	8,697
Hudson Falls village	7,752	7,236	6,654
Putnam town	490	534	534
WASHINGTON COUNTY--Con.			
Salem town	2,258	2,171	2,127
Salem village	1,076	1,067	1,034
White Creek town	2,365	2,120	2,103
Cambridge village (pt.)	1,229	1,146	1,061
Whitehall town	4,777	5,256	5,870
Whitehall village	4,016	4,497	4,851
WAYNE COUNTY	67,989	57,323	52,747
Arcadia town	15,836	12,816	12,108
Newark village[34]	12,868	10,295	9,646
Butler town	1,441	1,429	1,411
Wolcott village (pt.)	273	232	170
Galen town	4,419	4,036	3,858
Clyde village	2,693	2,492	2,356
Huron town	1,356	1,409	1,412
Lyons town	6,147	5,379	5,076
Lyons village	4,673	4,217	3,863
Macedon town	3,617	2,560	2,277
Macedon village	645	614	557
Marion town	2,785	2,412	2,240
Ontario town	4,259	3,297	2,851
Palmyra town	6,179	4,934	4,337
Palmyra village	3,476	3,034	2,709
Rose town	2,122	2,013	1,882
Savannah town	1,667	1,494	1,456
Savannah village	602	582	601
Sodus town	6,587	5,706	5,162
Sodus Point village[35]	868	...	...
Sodus village[35]	1,645	1,588	1,513
Walworth town	2,782	2,336	1,956
Williamson town	5,294	4,226	3,700
Williamson (U)	1,690	1,520	...
Wolcott town	3,498	3,276	3,021
Red Creek village	689	617	539
Wolcott village (pt.)	1,368	1,284	1,156
WESTCHESTER COUNTY	808,891	625,816	573,558
Bedford town	14,656	10,888	9,248
Mount Kisco village (pt.)	2,580	2,417	2,441
Cortlandt town	26,336	14,144	11,016
Buchanan village	2,019	1,820	1,600
Croton-on-Hudson village	6,812	4,637	3,843
Eastchester town	33,613	27,174	23,492
Bronxville village	6,744	6,778	6,888
Tuckahoe village	6,423	5,991	6,363
Greenburgh town	76,213	47,527	40,145
Ardsley village[36]	3,991	1,744	1,423
Dobbs Ferry village	9,260	6,268	5,883
Elmsford village	3,795	3,147	3,078
Hastings-on-Hudson village	8,979	7,565	7,057
Irvington village	5,494	3,657	3,272
Tarrytown village	11,109	8,851	6,874
Harrison town	19,201	13,577	11,783
Lewisboro town	4,165	2,352	1,929
Mamaroneck town	29,107	25,103	22,260
Larchmont village	6,789	6,330	5,970
Mamaroneck village (pt.)[36]	10,555	8,851	7,822
Mount Pleasant town	34,955	26,022	24,138
Briarcliff Manor village (pt.)	535	407	383
North Tarrytown village[37]	8,818	8,740	8,804
Pleasantville village[38]	5,677	4,861	4,454
Mount Vernon city	76,010	71,899	67,362
New Castle town	14,388	8,802	7,903
Mount Kisco village (pt.)	4,225	3,490	3,300
New Rochelle city	76,812	59,725	58,408
North Castle town	6,797	3,855	3,306
North Salem town	2,345	1,622	1,194
WESTCHESTER COUNTY--Con.			
Ossining town	26,199	20,137	18,911
Briarcliff Manor village (pt.)[39]	4,370	2,087	1,447
Ossining village[39]	18,662	16,098	15,996
Peekskill city	18,737	17,731	17,311
Pelham town	13,404	12,195	12,272
North Pelham village	5,326	5,046	5,052
Pelham village	1,964	1,843	1,918
Pelham Manor village	6,114	5,306	5,302
Pound Ridge town	2,373	1,234	806
Rye city	14,225	11,721	9,865
Rye town	38,147	32,796	40,135
Mamaroneck village (pt.)	7,118	6,165	5,212
Port Chester village	24,960	23,970	23,073
Scarsdale town	17,968	13,156	12,966
Scarsdale village	17,968	13,156	12,966
Somers town	5,468	3,159	2,406
Lake Shenrock (U)	1,402	...	...
White Plains city	50,485	43,466	40,327
Yonkers city	190,634	152,798	142,598
Yorktown town	16,453	4,731	3,642
Shrub Oak (U)	1,874	...	...
Yorktown (U)	3,576	...	...
Yorktown Heights (U)	2,478	...	...
WYOMING COUNTY	34,793	32,822	31,394
Arcade town	2,861	2,570	2,387
Arcade village	1,930	1,618	1,683
Attica town	5,781	5,722	5,477
Attica village (pt.)[40]	2,758	2,676	2,379
Bennington town	1,983	1,558	1,481
Castile town	2,609	2,361	2,172
Castile village	1,146	1,072	902
Perry village (pt.)	424	348	304
Covington town	827	789	698
Eagle town	896	868	922
Gainesville town	2,032	2,121	1,923
Gainesville village	369	314	283
Silver Springs village	726	830	766
Genesee Falls town	397	436	413
Java town	1,797	1,435	1,364
Middlebury town	1,416	1,248	1,123
Wyoming village	526	508	430
Orangeville town	633	648	699
Perry town	5,372	5,342	5,251
Perry village (pt.)	4,205	4,185	4,164
Pike town	878	885	838
Pike village	345	286	307
Sheldon town	1,898	1,618	1,378
Warsaw town	4,803	4,585	4,452
Warsaw village	3,653	3,713	3,554
Wethersfield town	650	616	616
YATES COUNTY	18,614	17,615	16,381
Barrington town	754	771	782
Benton town	2,093	1,866	1,879
Penn Yan village (pt.)	351	384	279
Italy town	428	455	457
Jerusalem town	2,847	2,732	2,043
Penn Yan village (pt.)	87	7	...
Middlesex town	817	765	764
Milo town	6,965	6,576	6,377
Penn Yan village (pt.)[41]	5,332	5,090	5,029
Potter town	1,106	1,157	1,109
Rushville village (pt.)	306	324	307
Starkey town	2,597	2,345	2,205
Dundee village	1,468	1,165	1,168
Torrey town	1,007	948	765
Dresden village	437	373	257

[1] ALBANY.—Part of Coeymans town annexed to Ravena village. Parts of Colonie town annexed to Colonie and Menands villages. Part of New Scotland town annexed to Voorheesville village.

[2] ALLEGANY.—Part of Wellsville town annexed to Wellsville village.

[3] BROOME.—Part of Dickinson town annexed to Binghamton city and part of Binghamton city detached and area annexed to Dickinson town.

[4] CATTARAUGUS.—Parts of Allegany town annexed to Allegany village. Part of Persia town annexed to Gowanda village. Part of Yorkshire town annexed to Delevan village.

[5] CHAUTAUQUA.—Part of Chautauqua town annexed to Mayville village. Part of Dunkirk town annexed to Dunkirk city. Part of Ellicott town annexed to Falconer village.

[6] CHEMUNG.—Part of Elmira town annexed to Elmira city. Part of Horseheads town annexed to Horseheads village.

[7] DELAWARE.—Downsville village disincorporated and area reverted to Colchester town. Part of Sidney town annexed to Sidney village.

[8] DUTCHESS.—Part of Northeast town annexed to Millerton village. Part of Wappinger town annexed to Wappingers Falls village.

[9] ERIE.—Part of Amherst town annexed to Williamsville village. Parts of Hamburg town annexed to Blasdell and Hamburg villages. Part of Newstead town annexed to Akron village. Part of Orchard Park town annexed to Orchard Park village.

[10] LIVINGSTON.—Part of Caledonia town annexed to Caledonia village. Part of Lima town annexed to Lima village. Part of Livonia town annexed to Livonia village. Part of North Dansville town annexed to Dansville village.

[11] MADISON.—Part of Hamilton town annexed to Hamilton village. Part of Lenox town annexed to Canastota village. Parts of Sullivan town annexed to Chittenango village.

[12] MONROE.—Parts of Irondequoit, Brighton, Greece, Gates, and Chili towns annexed to Rochester city. Part of Rochester city annexed to Chili town. Part of Clarkson town annexed to Brockport village. Part of Ogden town annexed to Spencerport village. Parts of Perinton and Pittsford towns annexed to East Rochester village. Part of Perinton town annexed to Fairport village. Part of Riga town annexed to Churchville village. Part of Webster town annexed to Webster village. Part of Wheatland town annexed to Scottsville village.

[13] MONTGOMERY.—Part of Canajoharie town annexed to Canajoharie village.

[14] NASSAU.—Parts of Hempstead town annexed to Cedarhurst, East Rockaway, Floral Park, Freeport, Garden City, Hempstead, Hewlett Harbor, Malverne, and Rockville Centre villages. Parts of Garden City village detached and area annexed to Stewart Manor and Hempstead villages and parts of Stewart Manor and Hempstead villages detached and area

[fol. 32x]

Table 7.—POPULATION OF COUNTIES, BY MINOR CIVIL DIVISIONS: 1940 TO 1960—Con.

[28] ONEIDA.—Parts of New Hartford town annexed to New Hartford and New York Mills villages and Utica city and part of Utica city detached and area annexed to New Hartford town. Part of Vernon town annexed to Sherrill city and Vernon village.

[29] ONONDAGA.—Part of Camillus town annexed to Camillus village. Part of Clay town annexed to North Syracuse village. Part of Elbridge town annexed to Elbridge village. Part of Lysander town annexed to Baldwinsville village. Part of Manlius town annexed to Fayetteville village. Part of Onondaga town annexed to Syracuse city. Part of Salina town annexed to Liverpool village.

[30] ONTARIO.—Part of East Bloomfield town annexed to East Bloomfield village. Part of Geneva town annexed to Geneva city.

[31] ORANGE.—Part of Blooming Grove town annexed to Washingtonville village. Part of Chester town annexed to Chester village. Part of Goshen town annexed to Goshen village. Part of Hamptonburgh and Montgomery towns annexed to Maybrook village. Part of Highlands town annexed to Highland Falls village. Part of Wallkill town annexed to Middletown city. Part of Monroe town annexed to Monroe village. Part of Montgomery town annexed to Montgomery village. Tuxedo Park village incorporated from part of Tuxedo town. Part of Warwick town annexed to Warwick village.

[32] ORLEANS.—Part of Ridgeway town annexed to Medina village.

[33] OSWEGO.—Part of Granby town annexed to Fulton city.

[34] ROCKLAND.—Parts of Clarkstown town annexed to Nyack, Spring Valley, and Upper Nyack villages. Part of Haverstraw town annexed to West Haverstraw village. Part of Grand View-on-Hudson village detached and area reverted to Orangetown town. Part of Ramapo town annexed to Spring Valley and Suffern villages. Part of Hillburn village detached and area annexed to Suffern village and part of Suffern village detached and area annexed to Hillburn village.

[35] ST. LAWRENCE.—Part of Gouverneur town annexed to Gouverneur village. Part of Louisville town annexed to Massena village. Part of Canegatchie town annexed to Ogdensburg city. Part of Potsdam town annexed to Norwood village.

[36] SARATOGA.—Part of Moreau town annexed to South Glens Falls village.

[37] SCHUYLER.—Parts of Catharine and Montour towns annexed to Odessa village.

[38] SENECA.—Parts of Romulus and Ovid towns annexed to Ovid village.

[39] STEUBEN.—Part of Avoca town annexed to Avoca village. Part of Corning town annexed to Corning city. Part of South Corning village detached and area annexed to Corning city. Part of Erwin town annexed to Painted Post village. Part of Hornellsville town annexed to Hornell city. Part of Urbana town annexed to Hammondsport village.

[40] SUFFOLK.—Part of Brookhaven town annexed to Shoreham and Patchogue villages.

[41] SULLIVAN.—Part of Liberty town annexed to Liberty village. Part of Thompson town annexed to Monticello village.

[42] TOMPKINS.—Parts of Ithaca town annexed to Cayuga Heights village and Ithaca city.

[43] ULSTER.—Part of New Paltz town annexed to New Paltz village. Parts of Wawarsing town annexed to Ellenville village and part of Ellenville village detached and area reverted to Wawarsing town.

[44] WAYNE.—Part of Arcadia town annexed to Newark village. Sodus Point village incorporated from part of Sodus town. Part of Sodus village detached and area reverted to Sodus town.

[45] WESTCHESTER.—Part of Greenburgh town annexed to Ardsley village. Part of Mamaroneck town annexed to Mamaroneck village. Parts of Mount Pleasant town annexed to Pleasantville and North Tarrytown villages. Parts of Cortlandt town annexed to Croton and Briarcliff Manor villages.

[46] WYOMING.—Part of Attica town annexed to Attica village.

[47] YATES.—Part of Milo town annexed to Penn Yan village.

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area]

Place	County	1960	1950	1940
Adams	Jefferson	1,914	1,762	1,394
Addison	Steuben	2,185	1,920	1,617
Afton	Chenango	956	875	806
Akron	Erie	2,841	2,481	2,263
Albany	Albany	129,726	134,995	130,577
Albion	Orleans	5,182	4,830	4,660
Alden	Erie	2,042	1,252	954
Alexander	Genesee	335	304	265
Alexandria Bay	Jefferson	1,583	1,688	1,748
Alfred	Allegany	2,807	2,053	694
Alfisgany	Cattaraugus	2,064	1,738	1,436
Almond	Allegany Steuben	696	639	533
Altamont	Albany	1,365	1,127	890
Altmar	Oswego	277	299	304
Amagansett (U)	Suffolk	1,095	...	...
Ames	Montgomery	162	193	180
Amityville	Suffolk	8,318	6,164	5,058
Amsterdam	Montgomery	28,772	32,340	33,329
Andes	Delaware	399	430	409
Andover	Allegany	1,247	1,351	1,290
Angelica	Allegany	898	928	928
Angola	Erie	2,499	1,938	1,663
Antwerp	Jefferson	881	846	817
Arcade	Wyoming	1,930	1,818	1,683
Ardsley	Westchester	5,991	1,744	1,423
Argyle	Washington	355	351	226
Arkport	Steuben	837	701	618
Arlington (U)	Dutchess	8,317	5,374	...
Asharoken	Suffolk	253	116	48
Athens	Greene	1,754	1,343	1,655
Attica	Genesee Wyoming	2,758	2,676	2,379
Auburn	Cayuga	35,249	36,722	35,753
Aurora	Cayuga	834	711	372
Ausable Forks (U)	Clinton Essex	2,026	1,843	...
Avoca	Steuben	1,086	952	1,006
Avon	Livingston	2,772	2,412	2,339
Babylon	Suffolk	11,362	6,015	4,742
Bainbridge	Chenango	1,712	1,305	1,450
Baldwin (U)	Nassau	30,204	...	...
Baldwinsville	Onondaga	5,985	4,495	3,840
Ballston Spa	Saratoga	4,991	4,937	4,434
Balmville (U)	Orange	1,538	...	...
Barker	Niagara	528	523	452
Batavia	Genesee	18,210	17,799	17,267
Bath	Steuben	6,166	5,416	4,696
Baxter Estates*	Nassau	932	862	760
Bayville	Nassau	3,962	1,981	1,516
Beacon	Dutchess	13,922	14,012	12,972
Bellerose*	Nassau	1,083	1,134	1,317
Belle Terre	Suffolk	295	120	89
Bellmore (U)	Nassau	12,784	...	...
Bellport	Suffolk	2,461	1,449	650
Belmont	Allegany	...	...	...
Bemus Point	Chautauqua	1,000	1,000	1,000
Bergen	Genesee	1,000	1,000	1,000
Berlin	Rensselaer	1,000	1,000	1,000
Bethlehem	Albany	1,000	1,000	1,000
Big Flats	Chemung	1,000	1,000	1,000
Binghamton	Broome	1,000	1,000	1,000
Blasdell	Erie	1,000	1,000	1,000
Bloomfield	Ontario	1,000	1,000	1,000
Bolivar	Allegany	1,000	1,000	1,000
Bolton Landing	Warren	1,000	1,000	1,000
Boonville	Oneida	1,000	1,000	1,000
Brentwood (U)	Suffolk	13,387	2,803	...
Brewster	Putnam	1,714	1,810	1,863
Briarcliff Manor	Westchester	5,105	2,494	1,830
Bridgewater	Oneida	373	309	238
Brightwaters	Suffolk	3,193	2,336	1,562
Brocton	Chautauqua	1,416	1,380	1,293
Bronxville	Westchester	6,744	6,778	6,888
Brookville*	Nassau	1,468	397	204
Brownville	Jefferson	1,082	1,013	907
Brushton	Franklin	353	316	487
Buchanan*	Westchester	2,019	1,820	1,600
Buffalo	Erie	532,759	580,132	575,901
Burdett	Schuyler	420	432	408
Burke	Franklin	273	316	344
Caledonia	Livingston	1,917	1,683	1,228
Cambridge	Washington	1,748	1,692	1,572
Camden	Oneida	2,694	2,407	2,021
Camillus*	Onondaga	1,416	1,225	1,133
Canajoharie	Montgomery	2,681	2,761	2,577
Canandaigua	Ontario	9,370	8,332	8,321
Canaseraga	Allegany	730	693	698
Canastota	Madison	4,896	4,458	4,150
Candor	Tioga	956	802	661
Canisteo	Steuben	2,731	2,625	2,550
Canton	St. Lawrence	5,046	4,379	3,018
Cape Vincent	Jefferson	770	812	931
Carthage	Jefferson	4,216	4,420	4,207
Cassadaga	Chautauqua	820	676	514
Castile	Wyoming	1,146	1,072	902
Castleton-on-Hudson	Rensselaer	1,732	1,751	1,515
Castorland	Lewis	321	308	309
Cato	Cayuga	476	431	412
Catskill	Greene	5,825	5,392	5,429
Cattaraugus	Cattaraugus	1,258	1,190	1,145
Cayuga	Cayuga	621	534	472
Cayuga Heights	Tompkins	2,788	1,131	651
Cazenovia	Madison	2,584	1,946	1,689
Cedarhurst	Nassau	6,956	6,051	5,463
Celoron	Chautauqua	1,507	1,555	1,349
Centereach (U)	Suffolk	8,524	...	...
Center Moriches (U)	Suffolk	2,521	1,761	...
Centerport (U)	Suffolk	3,628	...	...
Central Square	Oswego	935	665	568
Centre Island	Nassau	270	199	134
Champlain	Clinton	1,549	1,505	1,354
Chateaugay	Franklin	1,097	1,234	1,183
Chatham	Columbia	2,426	2,304	2,254
Chaumont	Jefferson	523	513	534
Cheektowaga-Northwest (U)	Erie	52,362	...	...
Cheektowaga-Southwest (U)	Erie	12,766	...	...
Cherry Creek	Chautauqua	649	631	529
Cherry Valley	Otsego	668	760	704
Chester	Orange	1,492	1,215	1,140

[fol. 32y]

[36] ORLEANS.—Part of Ridgeway town annexed to Medina village.

[37] ORWEGO.—Part of Granby town annexed to Fulton city.

[38] ROCKLAND.—Parts of Clarkstown town annexed to Nyack, Spring Valley, and Upper Nyack villages. Part of Haverstraw town annexed to West Haverstraw village. Part of Grand View-on-Hudson village detached and area reverted to Orangetown town. Part of Ramapo town annexed to Spring Valley and Suffern villages. Part of Hillburn village detached and area annexed to Suffern village and part of Suffern village detached and area annexed to Hillburn village.

...village detached and area ...to Wyoming town.

[39] WAYNE.—Part of Arcadia town annexed to Newark village. Sodus Point village incorporated from part of Sodus town. Part of Sodus village detached and area reverted to Sodus town.

[39] WESTCHESTER.—Part of Greenburgh town annexed to Ardsley village. Part of Mamaroneck town annexed to Mamaroneck village. Parts of Mount Pleasant town annexed to Pleasantville, and North Tarrytown villages. Parts of Ossining town annexed to Ossining and Briarcliff Manor villages.

[40] WYOMING.—Part of Attica town annexed to Attica village.

[41] YATES.—Part of Milo town annexed to Penn Yan village.

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960.

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area]

Place	County	1960	1950	1940
Adams	Jefferson	1,914	1,762	1,594
Addison	Steuben	2,185	1,920	1,617
Afton	Chenango	956	875	806
Akron	Erie	2,841	2,481	2,263
Albany	Albany	129,726	134,995	130,577
Albion	Orleans	5,182	4,850	4,660
Alden	Erie	2,042	1,252	954
Alexander	Genesee	335	304	265
Alexandria Bay	Jefferson	1,383	1,488	1,748
Alfred	Allegany	2,807	2,093	694
Allegany	Cattaraugus	2,064	1,738	1,436
Almond	Allegany Steuben	696	699	533
Altamont	Albany	1,365	1,127	890
Altmar	Oswego	277	299	304
Amagansett (U)	Suffolk	1,095	...	...
Ames	Montgomery	162	193	180
Amityville	Suffolk	8,318	6,166	5,058
Amsterdam	Montgomery	28,772	32,260	33,329
Andes	Delaware	399	430	409
Andover	Allegany	1,247	1,351	1,290
Angelica	Allegany	898	928	928
Angola	Erie	2,499	1,936	1,663
Antwerp	Jefferson	881	846	817
Arcade	Wyoming	1,930	1,818	1,683
Ardsley	Westchester	3,991	1,744	1,423
Argyle	Washington	355	351	226
Arkport	Steuben	837	701	618
Arlington (U)	Dutchess	8,317	5,374	...
Armonk	Suffolk	253	116	48
[redacted]	Greene	1,754	1,543	1,655
Attica	Genesee Wyoming	2,758	2,676	2,379
Auburn	Cayuga	35,249	36,722	35,753
Aurora	Cayuga Clinton	834	711	372
Ausable Forks (U)	Essex	2,026	1,643	...
Avoca	Steuben	1,586	952	1,006
Avon	Livingston	2,772	2,412	2,389
Babylon	Suffolk	11,062	6,015	4,742
Bainbridge	Chenango	1,712	1,505	1,450
Baldwin (U)	Nassau	30,204	...	...
Baldwinsville	Onondaga	5,985	4,495	3,840
Ballston Spa	Saratoga	4,991	4,937	4,434
Balmville (U)	Orange	1,538	...	...
Barker	Niagara	528	523	452
Batavia	Genesee	18,210	17,799	17,267
Bath	Steuben	6,166	5,416	4,696
Baxter Estates*	Nassau	932	862	760
Bayville	Nassau	3,962	1,981	1,516
Beacon	Dutchess	13,922	14,012	12,772
Bellerose*	Nassau	1,083	1,134	1,317
Belle Terre	Suffolk	295	120	89
Bellmore (U)	Nassau	12,784	...	...
Bellport	Suffolk	2,461	1,449	650
Belmont	Allegany	1,146	1,211	1,146
Bemus Point	Chautauqua	443	424	290
Bergen	Genesee	964	786	658
Bethpage-Old Bethpage (U)	Nassau	20,315	...	...
Binghamton	Broome	75,941	80,674	78,309
Black River	Jefferson	1,237	1,062	897
Blasdell	Erie	3,909	3,127	2,322
Bloomingburgh	Sullivan	303	263	197
Bloomingdale	Essex	490	476	446
Bolivar	Allegany	1,405	1,490	1,344
Boonville	Oneida	2,403	2,329	2,076
Brentwood (U)	Suffolk	15,387	2,803	...
Brewster	Putnam	1,714	1,810	1,863
Briarcliff Manor	Westchester	5,105	2,494	1,836
Bridgewater	Oneida	373	309	238
Brightwaters	Suffolk	3,193	2,356	1,562
Brocton	Fulton	1,438	1,400	1,399
Brockport	Monroe	5,256	4,748	3,990
Brocton	Chautauqua	1,416	1,380	1,293
Bronxville	Westchester	6,744	6,778	6,888
Brookville*	Nassau	1,468	337	204
Brownville	Jefferson	1,082	1,013	907
Brushton	Franklin	353	316	487
Buchanan*	Westchester	2,019	1,820	1,600
Buffalo	Erie	532,759	580,132	575,901
Burdett	Schuyler	420	432	408
Burke	Franklin	273	316	344
Caledonia	Livingston	1,917	1,683	1,226
Cambridge	Washington	1,748	1,692	1,972
Camden	Oneida	2,694	2,407	2,021
Camillus*	Onondaga	1,416	1,225	1,133
Canajoharie	Montgomery	2,681	2,761	2,977
Canandaigua	Ontario	9,370	8,332	8,321
Canaseraga	Allegany	730	693	698
Canastota	Madison	4,896	4,458	4,150
Candor	Tioga	956	802	661
Canisteo	Steuben	2,731	2,625	2,550
Canton	St. Lawrence	5,046	4,379	3,018
Cape Vincent	Jefferson	770	812	931
Carthage	Jefferson	4,216	4,420	4,207
Cassadaga*	Chautauqua	820	876	514
Castile	Wyoming	1,146	1,072	902
Castleton-on-Hudson	Rensselaer	1,752	1,751	1,515
Castorland	Lewis	321	308	309
Cato	Cayuga	476	431	412
Catskill	Greene	5,825	5,392	5,429
Cattaraugus	Cattaraugus	1,258	1,190	1,145
Cayuga	Cayuga	621	534	472
Cayuga Heights	Tompkins	2,788	1,131	631
Cazenovia	Madison	2,584	1,946	1,689
Cedarhurst	Nassau	6,954	6,051	5,463
Celoron	Chautauqua	1,507	1,555	1,349
Centereach (U)	Suffolk	8,524	...	...
Center Moriches (U)	Suffolk	2,521	1,761	...
Centerport (U)	Suffolk	3,628	...	...
Central Square	Oswego	935	665	568
Centre Island	Nassau	270	199	134
Champlain	Clinton	1,349	1,505	1,354
Chateaugay	Franklin	1,097	1,234	1,183
Chatham	Columbia	2,426	2,304	2,254
Chaumont	Jefferson	523	513	534
Cheektowaga-Northwest (U)	Erie	52,362	...	...
Cheektowaga-Southwest (U)	Erie	12,766	...	...
Cherry Creek	Chautauqua	649	631	529
Cherry Valley	Otsego	668	760	704
Chester	Orange	1,492	1,215	1,140
Chittenango	Madison	3,180	1,307	885
Churchville	Monroe	1,003	755	601
Clarence (U)	Erie	1,456	1,018	...
Clark Mills (U)	Oneida	1,148	...	...
Clayton	Jefferson	1,996	1,981	1,999
Clayville	Oneida	686	719	711
Cleveland	Oswego	732	555	440
Clifton Springs	Ontario	1,953	1,838	1,413
Clinton	Oneida	1,855	1,630	1,478
Clyde	Wayne	2,693	2,492	2,356
Cobleskill	Schoharie	3,471	3,208	2,617

[fol. 32y]

67

32 y

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960—Con.

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area]

Place	County	1960	1950	1940
Cohocton	Steuben	929	943	931
Cohoes	Albany	20,129	21,272	21,933
Cold Brook	Herkimer	372	342	271
Cold Spring	Putnam	2,083	1,788	1,897
Cold Spring Harbor (U)	Suffolk	1,705	...	...
Colonie	Albany	6,992	2,068	1,407
Commack (U)	Suffolk	9,613	...	...
Constableville	Lewis	439	378	340
Cooperstown	Otsego	2,333	2,727	2,999
Copenhagen	Lewis	673	690	608
Copiague (U)	Suffolk	14,081	...	...
Corfu	Genesee	616	542	442
Corinth	Saratoga	3,193	3,161	3,054
Corning	Steuben	17,085	17,684	16,212
Cornwall	Orange	2,785	2,211	1,978
Cornwall Southwest (U)	Orange	2,824	...	...
Cortland	Cortland	19,181	18,152	15,881
Cove Neck	Nassau	299	200	130
Cowaskie	Greene	2,849	2,722	2,352
Croghan	Lewis	821	772	801
Croton-on-Hudson	Westchester	6,812	4,837	3,843
Cuba	Allegany	1,949	1,783	1,699
Dannemora	Clinton	4,835	4,122	4,830
Dansville	Livingston	5,460	5,253	4,976
Deer Park (U)	Suffolk	16,726	...	...
Deferiet	Jefferson	470	616	620
Delanson	Schenectady	398	430	326
Delevan	Cattaraugus	777	611	554
Delhi	Delaware	2,307	2,223	1,841
Depew	Erie	13,580	7,217	6,084
Deposit	Broome / Delaware	2,025	2,016	2,028
Derby Harbor	Suffolk	19	4	34
De Ruyter	Madison	627	561	526
Dexter	Jefferson	1,009	1,098	1,109
Dobbs Ferry	Westchester	9,260	6,268	5,883
Dolgeville	Fulton / Herkimer	3,038	3,304	3,195
Dresden	Yates	437	373	257
Dryden	Tompkins	1,263	976	747
Dundee	Yates	1,468	1,165	1,168
Dunkirk	Chautauqua	18,205	18,007	17,713
Earlville	Chenango / Madison	1,004	945	864
East Aurora	Erie	6,791	5,962	5,253
East Bloomfield	Ontario	488	425	365
East Greenbush (U)	Rensselaer	1,325	...	...
East Hampton	Suffolk	1,772	1,737	1,736
East Herkimer (U)	Herkimer	1,068	...	...
East Hills	Nassau	7,184	2,547	343
East Massapequa (U)	Nassau	14,779	...	...
East Meadow (U)	Nassau	44,036	...	...
East Middletown (U)	Orange	1,752	1,485	...
East Moriches (U)	Suffolk	1,210	...	...
East Nock (U)	Suffolk	3,789	...	...
East Northport (U)	Suffolk	8,381	3,842	...
East Randolph	Cattaraugus	584	628	496
East Rochester	Monroe	8,132	7,022	6,691
East Rockaway	Nassau	10,721	7,970	5,610
East Setauket (U)	Suffolk	1,127	...	...
East Syracuse	Onondaga	4,708	4,766	4,520
East Williston	Nassau	2,940	1,734	1,152
Eden (U)	Erie	2,366	1,394	...
Edwards	St. Lawrence	658	584	624
Eggertsville (U)	Erie	44,807	...	...
Elba	Genesee	739	569	614
Elbridge	Onondaga	828	586	497
Elizabethtown	Essex	779	665	640
Ellenville	Ulster	5,003	4,225	4,000
Ellicottville	Cattaraugus	1,150	1,073	1,024
Ellisburg	Jefferson	328	285	253
Elmira	Chemung	46,517	49,716	45,106
Elmira Heights	Chemung	5,157	5,009	4,629
Elmira Southeast (U)	Chemung	6,698	...	...
Elmont (U)	Nassau	30,138	...	...
Elmsford	Westchester	3,795	3,147	3,078
Endicott	Broome	18,775	20,080	17,702
Esperance	Schoharie	314	322	219
Evans Mills	Jefferson	618	518	523
Fabius	Onondaga	378	369	308
Fair Haven	Cayuga	764	628	472
Fairport	Monroe	5,507	5,267	4,644
Fairview (U)	Dutchess	8,626	1,721	...
Falconer	Chautauqua	3,343	3,292	3,222
Farmingdale	Nassau	6,128	4,492	3,524
Farmingville (U)	Suffolk	2,134	...	...
[illegible]	Erie	422	396	...
Flower Hill	Nassau	4,394	1,948	666
Fonda	Montgomery	1,004	1,026	1,123
Forestville	Chautauqua	905	786	692
Fort Ann	Washington	453	443	439
Fort Covington	Franklin	976	891	813
Fort Edward	Washington	3,737	3,797	3,620
Fort Johnson	Montgomery	876	930	868
Fort Plain	Montgomery	2,809	2,935	2,770
Frankfort	Herkimer	3,872	3,844	3,839
Franklin	Delaware	525	558	481
Franklin Square (U)	Nassau	32,483	...	...
Franklinville	Cattaraugus	2,134	2,092	1,884
Fredonia	Chautauqua	8,477	7,095	5,738
Freeport	Nassau	34,419	24,680	20,410
Preston (U)	Suffolk	1,365	...	...
Freeville	Tompkins	471	373	379
Frewsburg (U)	Chautauqua	1,623	1,383	...
Friendship	Allegany	1,231	1,344	1,148
Fulton	Oswego	14,288	13,922	13,362
Fultonville	Montgomery	815	840	806
Gainesville	Wyoming	369	314	283
Galway	Saratoga	309	188	161
Garden City	Nassau	23,948	14,484	11,223
Garden City Park-Herricks (U)	Nassau	15,364	...	...
Geneseo	Livingston	3,284	2,838	2,144
Geneva	Ontario	17,286	17,144	15,555
Gilbertsville	Otsego	522	456	377
Glen Cove	Nassau	23,817	15,130	12,415
Glen Park	Jefferson	361	316	523
Glens Falls	Warren	18,980	19,610	18,836
Glenwood Park (U)	Orange	1,317	...	...
Gloversville	Fulton	21,741	23,634	23,329
Goshen	Orange	3,908	3,311	3,073
Gouverneur	St. Lawrence	4,946	4,916	4,478
Gowanda	Cattaraugus / Erie	3,352	3,289	3,156
Grand View-on-Hudson*	Rockland	330	302	588
Granville	Washington	2,715	2,826	3,173
Great Neck	Nassau	10,171	7,799	6,167
Great Neck Estates	Nassau	3,262	2,464	1,969
Great Neck Plaza	Nassau	4,948	4,246	2,031
Greene	Chenango	2,031	1,628	1,435
Green Island	Albany	3,533	4,016	3,988
Greenlawn (U)	Suffolk	5,422	1,000	...
Greenport	Suffolk	2,608	1,028	3,299
Greenwich	Washington	2,263	2,212	2,270
Greenwood Lake	Orange	1,236	819	483
Groton	Tompkins	2,123	2,150	2,087
Hagaman	Montgomery	1,292	1,114	933
Halesite (U)	Suffolk	2,857	...	...
Hamburg	Erie	9,145	6,938	5,467
Hamburg-Lake Shore (U)	Erie	11,527	...	...
Hamilton	Madison	3,348	3,307	1,790
Hammond	St. Lawrence	314	329	323
Hammondsport	Steuben	1,176	1,190	1,112
Hampton Bays (U)	Suffolk	1,431	1,269	...
Hancock	Delaware	1,830	1,360	1,381
Hannibal	Oswego	611	901	437
Harriman	Orange	752	676	703
Harris Hill (U)	Erie	3,944	...	...
Harrisville	Lewis	842	868	832
Hastings-on-Hudson	Westchester	8,979	7,565	7,057
Haverstraw	Rockland	5,771	5,818	5,909
Head of the Harbor	Suffolk	524	334	255
Hempstead	Nassau	34,641	29,135	20,856
Henrietta Northeast (U)	Monroe	6,403	...	...
Herkimer	Herkimer	9,396	9,400	9,634
Herman	St. Lawrence	412	347	487
Herrings	Jefferson	327	192	232
Heuvelton	St. Lawrence	810	712	630
Hewlett Bay Park*	Nassau	520	466	438
Hewlett Harbor*	Nassau	1,610	411	228
Hewlett Neck*	Nassau	507	369	252
Hicksville (U)	Nassau	50,405	...	...
Highland (U)	Ulster	2,931	3,035	...
Highland Falls	Orange	4,469	3,930	3,711
Hillburn*	Rockland	1,114	1,212	1,161
Hilton	Monroe	1,334	1,036	893
Hobart	Delaware	585	618	638
Holbrook (U)	Suffolk	3,441	...	...
Holcomb	Ontario	460	313	304
Holland Patent	Oneida	538	400	388
Holley	Orleans	1,788	1,551	1,230
Homer	Cortland	3,622	3,244	2,928
Honeoye Falls	Monroe	2,143	1,460	1,274
Hoosick Falls	Rensselaer	4,023	4,297	4,279

[fol. 32z]

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960—Con.

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area]

Place	County	1960	1950	1940
Hyde Park (U)	Dutchess	1,979	1,059	...
Ilion	Herkimer	10,199	9,363	8,927
Interlaken	Seneca	780	770	661
Inwood (U)	Nassau	10,362	...	...
Irvington	Westchester	5,494	3,657	3,272
Island Park	Nassau	3,846	2,031	1,531
Ithaca	Tompkins	28,799	29,257	19,730
Jamestown	Chautauqua	41,818	43,354	42,638
Jeffersonville	Sullivan	434	450	403
Jericho (U)	Nassau	10,795	...	...
Johnson City	Broome	19,118	19,249	18,039
Johnstown	Fulton	10,390	10,923	10,666
Jordan	Onondaga	1,390	1,295	1,215
Keeseville	Clinton / Essex	2,213	1,977	1,921
Kenmore	Erie	21,261	20,066	18,612
Kensington*	Nassau	1,166	978	933
Kinderhook	Columbia	1,078	853	745
Kings Park (U)	Suffolk	4,949	10,960	...
Kings Point	Nassau	5,410	2,445	1,247
Kingston	Ulster	29,260	28,817	28,589
Lackawanna	Erie	29,564	27,658	24,058
Laona	Oswego	556	540	413
Lake Carmel (U)	Putnam	2,735	1,055	...
Lake Erie Beach (U)	Erie	2,117	...	...
Lake George	Warren	1,026	1,005	803
Lake Katrine (U)	Ulster	1,149	...	...
Lake Placid	Essex	2,998	2,999	3,136
Lake Ronkonkoma (U)	Suffolk	4,841	...	...
Lake Shenorock (U)	Westchester	1,402	...	...
Lake Success	Nassau	2,954	1,264	203
Lakewood	Chautauqua	3,933	3,013	2,314
Lancaster	Erie	12,254	8,665	7,236
Larchmont	Westchester	6,789	6,330	5,970
Lattingtown*	Nassau	1,461	745	613
Laurel Hollow	Nassau	834	169	110
Laurens	Otsego	291	261	203
Lawrence	Nassau	5,907	4,681	3,649
Leicester	Livingston	365	364	327
Le Roy	Genesee	4,662	4,721	4,413
Levittown (U)	Nassau	68,276	...	...
Lewiston	Niagara	3,320	1,626	1,280
Liberty	Sullivan	4,704	4,658	3,788
Lima	Livingston	1,366	1,147	942
Limestone	Cattaraugus	339	601	558
Lincoln Park (U)	Ulster	2,707	1,527	...
Lindenhurst	Suffolk	20,905	8,644	4,756
Lisle	Broome	335	306	342
Little Falls	Herkimer	8,935	9,541	10,163
Little Valley	Cattaraugus	1,244	1,287	1,234
Liverpool	Onondaga	3,487	2,933	2,500
Livingston Manor (U)	Sullivan	2,080	...	...
Livonia	Livingston	946	837	751
Lloyd Harbor	Suffolk	2,521	945	603
Lockport	Niagara	26,443	25,133	24,379
Locust Grove (U)	Nassau	11,558	...	...
Lodi	Seneca	396	362	366
Long Beach	Nassau	26,473	15,586	9,036
Lowville	Lewis	3,616	3,671	3,578
Lynbrook	Nassau	19,881	17,314	14,597
Lyndonville	Orleans	755	777	745
Lyons	Wayne	4,673	4,217	3,863
Lyons Falls	Lewis	887	864	818
McGraw	Cortland	1,276	1,197	1,201
Macedon	Wayne	645	614	537
Madison	Madison	327	335	300
Mahopac (U)	Putnam	1,337	...	...
Malone	Franklin	8,737	9,501	8,743
Malverne	Nassau	9,968	8,086	5,153
Mamaroneck	Westchester	17,673	15,016	13,034
Manchester	Ontario	1,344	1,262	1,330
Manlius*	Onondaga	1,997	1,742	1,520
Mannsville	Jefferson	446	378	348
Manorhaven	Nassau	3,566	1,819	484
Marathon	Cortland	1,079	1,097	955
Marcellus	Onondaga	1,697	1,382	1,112
Margaretville	Delaware	833	905	812
Marlboro (U)	Ulster	1,733	1,709	...
Massapequa (U)	Nassau	32,900	...	...
Massapequa Park	Nassau	19,904	2,334	488
Massena	St. Lawrence	15,478	13,137	11,328
Mexico	Oswego	1,465	1,398	1,348
Middleburg	Schoharie	1,317	1,298	1,074
Middleport	Niagara	1,882	1,641	1,575
Middletown	Orange	23,475	22,586	21,908
Middleville	Herkimer	648	647	612
Milford	Otsego	548	502	460
Millbrook	Dutchess	1,717	1,568	1,340
Millerton	Dutchess	1,027	1,048	933
Mill Neck*	Nassau	701	505	101
Millport	Chemung	425	362	340
Mineola	Nassau	20,919	14,831	10,684
Mineville (U)	Essex	1,181	...	...
Minoa*	Onondaga	1,838	1,008	902
Mohawk	Herkimer	3,533	3,196	2,882
Monroe	Orange	3,323	1,753	1,616
Montgomery	Orange	1,312	1,063	844
Monticello	Sullivan	5,822	4,223	3,737
Montour Falls	Schuyler	1,533	1,457	1,345
Moores	Clinton	543	496	477
Moravia	Cayuga	1,575	1,480	1,231
Morris	Otsego	677	641	599
Morristown	St. Lawrence	541	546	540
Morrisville	Madison	1,304	1,250	666
Mount Kisco	Westchester	6,805	5,907	5,941
Mount Morris	Livingston	3,250	3,430	3,530
Mount Vernon	Westchester	76,010	71,899	67,362
Munnsville	Madison	391	412	357
Munsey Park	Nassau	2,847	2,048	1,456
Muttontown*	Nassau	1,265	382	335
Naples	Ontario	1,237	1,141	1,152
Nassau	Rensselaer	1,248	952	698
Nelliston	Montgomery	729	693	638
Nelsonville	Putnam	555	522	457
Nesconset (U)	Suffolk	1,964	...	...
Newark	Wayne	12,868	10,295	9,646
Newark Valley	Tioga	1,234	1,027	949
New Berlin	Chenango	1,262	1,178	999
Newburgh	Orange	30,979	31,956	31,883
Newfane (U)	Niagara	1,423	1,578	...
New Hartford*	Oneida	2,468	1,947	1,914
New Hyde Park	Nassau	10,808	7,349	4,691
New Paltz	Ulster	3,041	2,285	1,492
Newport	Herkimer	827	752	627
New Rochelle	Westchester	76,812	59,725	38,408
New Windsor (U)	Orange	4,061	2,754	...
New York City		7,781,984	7,891,957	7,454,995
Bronx Borough	Bronx	1,424,815	1,451,277	1,394,711
Brooklyn Borough	Kings	2,627,319	2,738,175	2,698,285
Manhattan Borough	New York	1,698,281	1,960,101	1,889,924
Queens Borough	Queens	1,809,578	1,550,849	1,297,634
Richmond Borough	Richmond	221,991	191,555	174,441
New York Mills	Oneida	3,788	3,366	3,628
Niagara Falls	Niagara	102,394	90,872	78,029
Nichols	Tioga	663	578	341
Nissequogue	Suffolk	332	219	188
Norfolk (U)	St. Lawrence	1,353	1,252	...
North Bellmore (U)	Nassau	19,639	...	...
North Collins	Erie	1,574	1,325	1,182
North Haven	Suffolk	450	153	131
North Hills*	Nassau	359	330	295
North Hornell	Steuben	917	605	584
North Merrick (U)	Nassau	12,936	...	...
North New Hyde Park (U)	Nassau	17,929	...	...
North Pelham	Westchester	5,326	5,046	5,052
Northport	Suffolk	5,972	3,859	3,093
North Syracuse	Onondaga	7,412	3,356	2,083
North Tarrytown	Westchester	8,818	8,740	8,804
North Tonawanda	Niagara	34,757	24,731	20,254
North Valley Stream (U)	Nassau	17,239	...	...
Northville	Fulton	1,156	1,114	1,111
Norwich	Chenango	9,175	8,816	8,694
Norwood	St. Lawrence	2,200	1,995	1,905
Nunda	Livingston	1,224	1,224	1,077
Nyack	Rockland	6,062	5,889	5,206
Oakfield	Genesee	2,070	1,781	1,876
Ocean Beach	Suffolk	111	73	81
Oceanside (U)	Nassau	30,448	...	...
Odessa	Schuyler	573	526	424
Ogdensburg	St. Lawrence	16,122	16,166	16,346
Olcott (U)	Niagara	1,215	...	...
Old Brookville*	Nassau	1,126	644	356

[fol. 32aa]

Roseville			
Remsen			
Kensington*			
Kinderhook			
Kings Park (U)			
Kings Point			
Kingston			
Lackawanna			
Laconia			
Lake Carmel (U)			
Lake Erie Beach (U)			
Lake George			
Lake Katrine (U)			
Lake Placid			
Lake Ronkonkoma (U)			
Lake Shenorock (U)			
Lake Success			
Lakewood			
Lancaster			
Larchmont			
Lattingtown*			
Laurel Hollow			
Laurens			
Lawrence			
Leicester			
Le Roy			
Levittown (U)			
Lewiston			
Liberty			
Lima			
Limestone			
Lincoln Park (U)			
Lindenhurst			
Lisle			
Little Falls			
Little Valley			
Liverpool			
Livingston Manor (U)			
Livonia			
Lloyd Harbor			
Lockport			
Locust Grove (U)			
Lodi			
Long Beach			
Lowville			
Lynbrook			
Lyndonville			
Lyons			
Lyons Falls			
McGraw			
Macedon			
Madison			
Mahopac (U)			
Malone			
Malverne			
Mamaroneck			
Manchester			
Manlius*			
Mannsville			
Manorhaven			
Marathon			
Marcellus			
Margaretville			
Marlboro (U)			
Massapequa (U)			
Massapequa Park			
Massena			
Mastic Beach (U)			
Mastic Shirley (U)			
Matinecock*			
Mattituck (U)			
Maybrook			
Mayfield			
Mayville			
Mechanicville			
Medina			
Melrose Park (U)			
Menands*			
Meridian			
Merrick (U)			
Essex	4,213	4,977	1,921
Erie	21,261	20,066	18,612
Nassau	1,168	978	933
Columbia	1,078	853	745
Suffolk	4,949	10,960	...
Nassau	5,410	2,445	1,347
Ulster	29,260	28,817	28,589
Erie	29,564	27,658	24,058
Oswego	596	540	413
Putnam	2,735	1,055	...
Erie	2,117	...	...
Warren	1,026	1,005	803
Ulster	1,149	...	...
Essex	2,998	2,999	3,136
Suffolk	4,841	...	...
Westchester	1,402	...	...
Nassau	2,954	1,264	203
Chautauqua	3,933	3,013	2,314
Erie	12,254	8,665	7,236
Westchester	6,789	6,330	5,970
Nassau	1,461	743	613
Nassau	834	169	110
Otsego	291	261	203
Nassau	5,907	4,681	3,649
Livingston	365	364	327
Genesee	4,662	4,721	4,413
Nassau	65,276	...	...
Niagara	3,320	1,626	1,280
Sullivan	4,704	4,658	3,788
Livingston	1,366	1,147	942
Cattaraugus	539	601	558
Ulster	2,707	1,527	...
Suffolk	20,905	8,644	4,756
Broome	335	306	342
Herkimer	8,935	9,541	10,163
Cattaraugus	1,244	1,287	1,234
Onondaga	3,487	2,933	2,500
Sullivan	2,080	...	...
Livingston	946	837	751
Suffolk	2,521	945	603
Niagara	26,443	25,133	24,379
Nassau	11,558	...	...
Seneca	396	362	366
Nassau	26,473	15,586	9,036
Lewis	3,616	3,671	3,578
Nassau	19,881	17,314	14,557
Orleans	755	777	745
Wayne	4,673	4,217	3,863
Lewis	887	864	818
Cortland	1,276	1,197	1,201
Wayne	645	614	557
Madison	327	335	300
Putnam	1,337	...	...
Franklin	8,737	9,501	8,743
Nassau	9,968	8,086	5,153
Westchester	17,673	15,016	13,034
Ontario	1,344	1,262	1,330
Onondaga	1,997	1,742	1,520
Jefferson	446	378	348
Nassau	3,566	1,819	484
Cortland	1,079	1,057	955
Onondaga	1,697	1,382	1,112
Delaware	833	905	812
Ulster	1,733	1,709	...
Nassau	32,900	...	...
Nassau	19,904	2,334	488
St. Lawrence	15,478	13,137	11,328
Suffolk	3,035	1,079	...
Suffolk	3,397	...	...
Nassau	824	507	428
Suffolk	1,274	1,089	...
Orange	1,348	1,316	1,189
Fulton	818	761	759
Chautauqua	1,619	1,492	1,354
Saratoga	6,831	7,385	7,469
Orleans	6,681	6,179	5,871
Cayuga	2,098	1,803	...
Albany	2,314	2,453	1,766
Cayuga	379	334	307
Nassau	18,789	...	...
Monroe			
Montgomery			
Monticello			
Montour Falls			
Moores			
Moravia			
Morris			
Morristown			
Morrisville			
Mount Kisco			
Mount Morris			
Mount Vernon			
Munnsville			
Munsey Park			
Muttontown*			
Naples			
Nassau			
Nelliston			
Nelsonville			
Nesconset (U)			
Newark			
Newark Valley			
New Berlin			
Newburgh			
Newfane (U)			
New Hartford*			
New Hyde Park			
New Paltz			
Newport			
New Rochelle			
New Windsor (U)			
New York City			
Bronx Borough			
Brooklyn Borough			
Manhattan Borough			
Queens Borough			
Richmond Borough			
New York Mills			
Niagara Falls			
Nichols			
Nissequogue			
Norfolk (U)			
North Bellmore (U)			
North Collins			
North Haven			
North Hills*			
North Hornell			
North Merrick (U)			
North New Hyde Park (U)			
North Pelham			
Northport			
North Syracuse			
North Tarrytown			
North Tonawanda			
North Valley Stream (U)			
Northville			
Norwich			
Norwood			
Nunda			
Nyack			
Oakfield			
Ocean Beach			
Oceanside (U)			
Odessa			
Ogdensburg			
Olcott (U)			
Old Brookville*			
Old Field			
Old Westbury*			
Olean			
Oneida			
Oneida Castle			
Oneonta			
Orchard Park			
Oriskany*			
Oriskany Falls			
Ossining			
Oswego			
Otego			
Otisville			
Herkimer		3,479	2,882
Orange	3,343	1,753	1,616
Orange	1,312	1,069	844
Sullivan	5,222	4,223	3,737
Schuyler	1,533	1,457	1,345
Clinton	543	496	477
Cayuga	1,575	1,480	1,231
Otsego	677	641	599
St. Lawrence	541	546	540
Madison	1,304	1,250	666
Westchester	6,805	5,907	5,941
Livingston	3,250	3,450	3,530
Westchester	76,010	71,899	67,362
Madison	391	412	357
Nassau	2,847	2,048	1,456
Nassau	1,265	382	335
Ontario	1,237	1,141	1,152
Rensselaer	1,348	952	698
Montgomery	729	693	638
Putnam	555	522	457
Suffolk	1,964	...	...
Wayne	12,868	10,295	9,646
Tioga	1,234	1,027	949
Chenango	1,262	1,178	999
Orange	30,979	31,956	31,883
Niagara	1,423	1,378	...
Oneida	2,468	1,947	1,914
Nassau	10,808	7,349	4,691
Ulster	3,041	2,285	1,492
Herkimer	827	752	627
Westchester	76,812	59,723	58,408
Orange	4,041	2,754	...
	7,781,984	7,891,957	7,454,995
Bronx	1,424,815	1,451,277	1,394,711
Kings	2,627,319	2,738,175	2,698,285
New York	1,698,281	1,960,101	1,889,924
Queens	1,809,578	1,550,849	1,297,634
Richmond	221,991	191,555	174,441
Oneida	3,788	3,366	3,628
Niagara	102,394	90,872	78,029
Tioga	663	578	541
Suffolk	332	219	188
St. Lawrence	1,353	1,252	...
Nassau	19,639	...	...
Erie	1,574	1,325	1,182
Suffolk	450	153	131
Nassau	359	330	295
Steuben	917	605	584
Nassau	12,976	...	...
Nassau	17,929	...	...
Westchester	5,326	5,046	5,052
Suffolk	5,972	3,859	3,093
Onondaga	7,412	3,356	2,083
Westchester	8,818	8,740	8,804
Niagara	34,757	24,731	20,254
Nassau	17,239	...	...
Fulton	1,156	1,114	1,111
Chenango	9,175	8,816	8,694
St. Lawrence	2,200	1,995	1,905
Livingston	1,224	1,224	1,077
Rockland	6,062	5,889	5,206
Genesee	2,070	1,781	1,876
Suffolk	111	73	81
Nassau	30,448	...	...
Schuyler	979	726	426
St. Lawrence	16,122	16,160	16,346
Niagara	1,215	...	...
Nassau	1,126	644	356
Suffolk	373	238	123
Nassau	2,064	1,160	1,017
Cattaraugus	21,868	22,884	21,506
Madison	11,677	11,325	10,291
Oneida	754	596	554
Otsego	13,412	13,564	11,731
Erie	3,278	2,054	1,304
Oneida	1,580	1,346	1,115
Oneida	972	893	930
Westchester	18,662	16,098	15,996
Oswego	22,155	22,647	22,062
Otsego	875	699	580
Orange	836	911	889

[fol. 32aa]

32 AA

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960—Con.

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an urbanized area]

Place	County	1960	1950	1940
Ovid	Seneca	789	646	578
Otego	Otsego	3,417	3,350	3,068
Oxford	Chenango	1,871	1,811	1,713
Oyster Bay Cove	Nassau	988	561	466
Painted Post	Steuben	2,370	2,405	2,337
Palatine Bridge	Montgomery	378	392	385
Palmyra	Wayne	3,476	3,034	2,709
Panama	Chautauqua	450	456	374
Parish	Oswego	567	574	521
Patchogue	Suffolk	8,836	7,361	7,181
Pawling	Dutchess	1,734	1,430	1,446
Peekskill	Westchester	18,737	17,731	17,311
Pelham*	Westchester	1,964	1,843	1,918
Pelham Manor	Westchester	6,114	5,306	5,302
Penn Yan	Yates	5,770	5,481	5,308
Perry	Wyoming	4,629	4,533	4,468
Perrysburg	Cattaraugus	434	361	375
Phelps	Ontario	1,887	1,650	1,499
Philadelphia	Jefferson	868	870	722
Philmont	Columbia	1,750	1,792	1,679
Phoenix	Oswego	2,408	1,917	1,757
Piermont*	Rockland	1,906	1,897	1,876
Pike	Wyoming	345	286	307
Pine Bush (U)	Orange	1,016	...	...
Pine Hill	Ulster	180	233	242
Pittsford*	Monroe	1,749	1,668	1,544
Plainedge (U)	Nassau	21,973	...	...
Plainview (U)	Nassau	27,710	...	...
Plandome*	Nassau	1,379	1,102	897
Plandome Heights*	Nassau	1,025	882	317
Plandome Manor*	Nassau	705	323	262
Plattsburgh	Clinton	20,172	17,738	16,351
Pleasantville	Westchester	9,877	4,861	4,454
Poland	Herkimer	564	511	478
Poquott	Suffolk	295	136	73
Port Byron	Cayuga	1,201	1,013	961
Port Chester	Westchester	24,960	23,970	23,073
Port Dickinson*	Broome	2,295	2,199	2,436
Port Ewen (U)	Ulster	2,622	1,885	...
Port Henry	Essex	1,767	1,831	1,935
Port Jefferson (U)	Suffolk	2,336	3,296	...
Port Jefferson Station (U)	Suffolk	1,041	...	...
Port Jervis	Orange	9,268	9,372	9,749
Port Leyden	Lewis	898	841	784
Portville	Cattaraugus	1,336	1,151	1,018
Port Washington (U)	Nassau	15,697	...	...
Port Washington North*	Nassau	722	650	628
Potsdam	St. Lawrence	7,765	7,491	4,821
Poughkeepsie	Dutchess	38,330	41,023	40,478
Prattsburg	Steuben	690	653	635
Prumpsett	Oneida	348	318	285
Pulaski	Oswego	2,256	2,033	1,895
Quogue	Suffolk	692	625	633
Randolph	Cattaraugus	1,414	1,455	1,321
Ravena	Albany	2,410	2,006	1,810
Red Creek	Wayne	689	617	539
Red Hook	Dutchess	1,719	1,225	1,056
Remsen	Oneida	567	483	422
Rensselaer	Rensselaer	10,506	10,856	10,768
Rensselaer Falls	St. Lawrence	375	323	261
Rhinebeck	Dutchess	2,093	1,923	1,697
Richburg	Allegany	493	514	564
Richfield Springs	Otsego	1,630	1,334	1,209
Richmondville	Schoharie	743	709	598
Richville	St. Lawrence	282	254	274
Ripley (U)	Chautauqua	1,247	1,229	...
Riverhead (U)	Suffolk	5,830	4,892	...
Riverside	Steuben	1,030	818	643
Rhinebeck (U)	Dutchess	1,800	1,219	...
Rochester	Monroe	318,611	332,488	324,975
Rockville Centre	Nassau	26,355	22,362	18,613
Rocky Point (U)	Suffolk	2,261	...	...
Rome	Oneida	51,646	41,682	34,214
Ronkonkoma (U)	Suffolk	4,220	1,334	...
Ronkonkoma West (U)	Suffolk	1,446	...	...
Roosevelt (U)	Nassau	12,883	...	...
Rosendale	Ulster	1,033	883	871
Roslyn	Nassau	2,681	1,612	972
Roslyn Estates*	Nassau	1,289	612	464
Roslyn Harbor*	Nassau	925	402	303
Rotterdam (U)	Schenectady	16,871	...	...
Sands Point*	Nassau	2,161	880	688
Sandy Creek	Oswego	887	708	644
San Remo (U)	Suffolk	11,996	...	...
Saranac Lake	Essex Franklin	6,421	6,913	7,198
Saratoga Springs	Saratoga	16,630	15,473	13,709
Saugerties	Ulster	4,286	3,907	3,916
Sauquoit (U)	Oneida	1,719	1,227	...
Savannah	Wayne	602	582	601
Savona	Steuben	904	869	683
Scarsdale	Westchester	17,968	13,136	12,944
Schaghticoke	Rensselaer	720	687	603
Schenectady	Schenectady	81,682	91,785	87,549
Schenevus	Otsego	493	568	472
Schoharie	Schoharie	1,168	1,039	941
Schuylerville	Saratoga	1,383	1,314	1,447
Scotia	Schenectady	7,625	7,812	7,960
Scottsville	Monroe	1,863	1,025	983
Scranton (U)	Erie	1,078	...	...
Sea Cliff	Nassau	5,669	4,868	4,416
Seaford (U)	Nassau	14,718	...	...
Selden (U)	Suffolk	1,604	1,743	...
Seneca Falls	Seneca	7,439	6,634	6,492
Setauket (U)	Suffolk	1,207	...	...
Sharon Springs	Schoharie	351	361	433
Sherburne	Chenango	1,647	1,804	1,192
Sherman	Chautauqua	873	861	875
Sherrill	Oneida	2,922	2,236	2,184
Shoreham	Suffolk	164	90	25
Shortsville	Ontario	1,382	1,314	1,316
Shrub Oak (U)	Westchester	1,874	...	...
Sidney	Delaware	5,157	4,815	3,812
Silver Creek	Chautauqua	3,310	3,068	3,087
Silver Springs	Wyoming	726	830	744
Sinclairville	Chautauqua	726	672	585
Skaneateles	Onondaga	2,921	2,331	1,949
Sloan	Erie	3,803	4,698	3,836
Sloatsburg	Rockland	2,565	2,018	1,771
Smithtown Branch (U)	Suffolk	1,986	1,424	...
Smyrna	Chenango	286	269	254
Sodus	Wayne	1,645	1,588	1,513
Sodus Point	Wayne	868	...	...
Solvay	Onondaga	8,732	7,868	8,331
Sound Beach (U)	Suffolk	1,625	...	...
Southampton	Suffolk	4,582	4,042	3,618
South Corning	Steuben	1,448	880	681
South Dayton	Cattaraugus	696	727	643
South Fallsburgh (U)	Sullivan	1,290	1,147	...
South Farmingdale (U)	Nassau	16,318	...	...
South Floral Park*	Nassau	1,090	972	510
South Glens Falls	Saratoga	4,129	3,645	3,081
South Huntington (U)	Suffolk	7,084	1,274	...
South Nyack	Rockland	3,113	3,102	2,093
South Westbury (U)	Nassau	11,977	...	...
Speculator	Hamilton	372	370	278
Spencer	Tioga	767	694	615
Spencerport	Monroe	2,461	1,595	1,340
Spring Valley	Rockland	6,538	4,500	4,308
Springville	Erie	3,852	3,322	2,849
Stamford	Delaware	1,166	1,162	1,088
Stewart Manor*	Nassau	2,422	1,879	1,625
Stillwater	Saratoga	1,398	1,276	971
Stony Brook (U)	Suffolk	3,548	...	...
Stony Point (U)	Rockland	3,330	1,438	...
Stottville (U)	Columbia	1,040	1,020	...
Suffern	Rockland	5,094	4,010	3,768
Syracuse	Onondaga	216,038	220,583	205,967
Tannersville	Greene	380	639	640
Tarrytown	Westchester	11,109	8,851	6,874
Theresa	Jefferson	956	925	908
Thomaston	Nassau	2,767	2,045	1,159
Ticonderoga	Essex	3,568	3,317	3,402
Tivoli	Dutchess	732	753	761
Tonawanda	Erie	21,561	14,617	13,008
Tonawanda (U)	Erie	83,771	...	...
Trenton	Oneida	363	331	296
Troy	Rensselaer	67,492	72,311	70,304
Trumansburg	Tompkins	1,768	1,479	1,130
Tuckahoe	Westchester	6,423	5,991	6,363
Tully	Onondaga	803	744	719
Tupper Lake	Franklin	5,200	5,441	5,451

[fol. 32bb]

Penn Yan	Yates	3,970	3,481	3,338
Perry	Wyoming	4,488	4,333	4,466
Perrysburg	Cattaraugus	434	362	373
Phelps	Ontario	1,897	1,650	1,698
Philadelphia	Jefferson	846	870	725
Philmont	Columbia	1,730	1,792	1,679
Phoenix	Oswego	2,828	1,917	1,737
Pierrepont*	Richland	1,906	1,897	1,876
Pike	Wyoming	345	286	307
Pine Bush (U)	Orange	1,824	...	...
Pine Hill	Ulster	180	233	242
Pittsford*	Monroe	1,749	1,668	1,544
Plattekill (U)	Ulster	21,973	...	...
Plattsburg (V)	Clinton	27,710	...	...
Pleasant*	Monroe	1,379	1,102	697
Pleasant Heights*	Monroe	1,025	882	317
Pleasant Valley*	Monroe	726	323	242
Plattsburgh	Clinton	20,172	17,726	14,331
Pleasantville	Westchester	5,977	4,861	4,434
Poland	Herkimer	944	811	478
Poquott	Suffolk	283	134	73
Port Byron	Cayuga	1,211	1,013	961
Port Chester	Westchester	24,980	27,970	23,073
Port Dickinson*	Broome	2,255	2,199	2,436
Port Henry (V)	Clinton	2,422	1,885	...
Port Henry	Essex	1,747	1,831	1,939
Port Jefferson (V)	Suffolk	2,335	2,296	...
Port Jefferson Station (V)	Suffolk	1,043	...	...
Port Jervis	Orange	9,246	9,372	9,749
Port Leyden	Lewis	898	841	794
Portville	Cattaraugus	1,336	1,151	1,018
Port Washington (U)	Nassau	15,457	...	...
Port Washington North*	Nassau	722	650	626
Potsdam	St. Lawrence	7,768	7,491	4,825
Poughkeepsie	Dutchess	38,330	41,023	40,478
Poughkeepsie	Steuben	680	693	635
Prospect	Oneida	348	318	285
Pulaski	Oswego	2,256	2,033	1,895
Quogue	Suffolk	692	625	533
Randolph	Cattaraugus	1,414	1,433	1,321
Ravena	Albany	2,410	2,006	1,810
Red Creek	Wayne	689	617	539
Red Hook	Dutchess	1,719	1,225	1,054
Remsen	Oneida	507	483	422
Rensselaer	Rensselaer	10,306	10,854	10,708
Rensselaer Falls	St. Lawrence	375	323	263
Rhinebeck	Dutchess	2,083	1,923	1,697
Richburg	Allegany	493	314	364
Richfield Springs	Otsego	1,430	1,334	1,209
Richmondville	Schoharie	743	709	598
Richville	St. Lawrence	292	254	274
Ripley (V)	Chautauqua	1,347	1,229	...
Riverhead (U)	Suffolk	5,830	4,892	...
Riverside	Steuben	1,030	818	643
Rockdale (U)	Dutchess	1,800	1,219	...
Rochester	Monroe	318,611	332,488	324,979
Rockville Centre	Nassau	26,353	22,362	18,613
Rocky Point (U)	Suffolk	2,361	...	...
Rome	Oneida	51,646	41,682	34,214
Roosevelt (U)	Suffolk	4,220	1,334	...
Roosevelt West (U)	Suffolk	1,446	...	...
Roosevelt (U)	Nassau	12,883	...	...
Rosendale	Ulster	1,033	883	871
Roslyn	Nassau	2,681	1,612	972
Roslyn Estates*	Nassau	1,289	612	464
Roslyn Harbor*	Nassau	925	402	303
Rotterdam (U)	Schenectady	14,871	...	...
Rouses Point	Clinton	2,160	2,001	1,846
Rushville	Ontario Yates	443	443	428
Russell Gardens*	Nassau	1,156	912	256
Rye	Westchester	14,225	11,721	9,843
Sackets Harbor	Jefferson	1,279	1,247	1,962
Saddle Rock*	Nassau	1,108	33	69
Sag Harbor	Suffolk	2,346	2,273	2,317
St. James (U)	Suffolk	3,524	1,390	...
St. Johnsville	Montgomery	2,196	2,210	2,383
Salamanca	Cattaraugus	8,480	8,861	9,011
Salem	Washington	1,076	1,067	1,034
Saltaire	Suffolk	26	21	22

Schoharie	Schoharie	1,248	Apr.	[illegible]
Schuylerville	Saratoga	1,361	1,324	1,427
Scotia	Schenectady	7,825	7,613	7,995
Scottsville	Monroe	1,843	1,829	1,889
Scriba (V)	Oswego	1,078	...	...
Sea Cliff	Nassau	3,489	4,048	4,414
Seaford (U)	Nassau	34,758	...	...
Selden (U)	Suffolk	1,804	1,313	...
Seneca Falls	Seneca	7,458	6,804	6,182
Setauket (U)	Suffolk	1,207	...	...
Severn Springs	Schoharie	351	341	433
Shelburne	Chenango	1,447	1,484	1,378
Shenorock	Chautauqua	872	881	872
Sherrill	Oneida	3,922	3,896	3,734
Shoreham	Suffolk	164	90	85
Shortsville	Ontario	1,382	1,314	1,314
Shrub Oak (U)	Westchester	1,874	...	...
Sidney	Delaware	3,177	4,815	3,812
Silver Creek	Chautauqua	3,310	3,068	3,097
Silver Springs	Wyoming	726	830	766
Sinclairville	Chautauqua	726	872	825
Skaneateles	Onondaga	2,921	2,331	1,949
Sloan	Erie	5,803	4,898	3,836
Sloatsburg	Rockland	2,343	2,018	1,771
Smithtown Branch (U)	Suffolk	1,984	1,434	...
Smyrna	Chenango	284	269	254
Sodus	Wayne	1,643	1,388	1,513
Sodus Point	Wayne	846	...	...
Solvay	Onondaga	8,732	7,866	8,321
Sound Beach (U)	Suffolk	1,625	...	...
Southampton	Suffolk	4,382	4,042	3,818
South Corning	Steuben	1,448	880	681
South Dayton	Cattaraugus	1,086	727	643
South Fallsburgh (U)	Sullivan	1,290	1,147	...
South Farmingdale (U)	Nassau	16,318	...	...
South Floral Park*	Nassau	1,080	972	910
South Glens Falls	Saratoga	4,129	3,645	3,081
South Huntington (U)	Suffolk	7,084	1,374	...
South Nyack	Rockland	3,113	3,102	2,883
South Westbury (U)	Nassau	11,977	...	...
Speculator	Hamilton	372	370	278
Spencer	Tioga	787	684	613
Spencerport	Monroe	2,441	1,985	1,340
Spring Valley	Rockland	6,538	4,900	4,328
Springville	Erie	3,852	3,322	2,849
Stamford	Delaware	1,144	1,162	1,088
Stewart Manor*	Nassau	2,422	1,879	1,425
Stillwater	Saratoga	1,388	1,276	971
Stony Brook (U)	Suffolk	3,348	...	...
Stony Point (U)	Rockland	3,330	1,438	...
Stottville (U)	Columbia	1,040	1,020	...
Suffern	Rockland	3,094	4,010	3,748
Syracuse	Onondaga	216,038	220,583	205,967
Tappanzville	Greene	380	439	440
Tarrytown	Westchester	11,109	8,851	6,874
Thurman	Jefferson	956	925	908
Thompson	Sullivan	2,787	2,045	1,139
Ticonderoga	Essex	3,368	3,317	3,402
Tivoli	Dutchess	732	753	761
Tonawanda	Erie	21,361	14,617	13,008
Tonawanda (U)	Erie	83,771	...	...
Trenton	Oneida	363	331	296
Troy	Rensselaer	67,492	72,311	70,304
Trumansburg	Tompkins	1,768	1,679	1,130
Tuckahoe	Westchester	4,423	5,981	6,583
Tully	Onondaga	803	744	719
Tupper Lake	Franklin	5,200	5,441	5,431
Turin	Lewis	323	273	247
Tuxedo Park	Orange	723	...	...
Unadilla	Otsego	1,386	1,317	1,079
Uniondale (U)	Nassau	20,041	...	...
Union Springs	Cayuga	1,044	937	925
Valatie	Columbia	1,277	1,225	1,208
Valhalla	Westchester	511	454	387
Upper Brookville*	Nassau	1,045	449	436
Upper Nyack*	Rockland	1,833	1,193	924
Utica	Oneida	100,410	101,331	100,518
Valatie	Columbia	1,277	1,225	1,208
Valley Falls	Rensselaer	389	333	344
Valley Stream	Nassau	38,429	26,834	16,879
Van Etten	Chemung	307	304	440

[fol. 32bb]

70

32 BB

Table 8.—POPULATION OF ALL INCORPORATED PLACES AND OF UNINCORPORATED PLACES OF 1,000 OR MORE: 1940 TO 1960—Con.

["U" denotes an unincorporated place. Asterisk (*) denotes an incorporated place under 2,500 located in an unfinished area]

Place	County	1950	1940	1940	Place	County	1950	1940	1940
Vernon	Oneida	913	794	587	West Elmira (U)	Chemung	5,743	5,833	...
Vernon Valley (U)	Suffolk	5,998	...	...	West End (U)	Otsego	1,434	1,285	...
Victor	Ontario	1,180	1,086	1,211	Westfield	Chautauqua	3,978	3,663	3,434
Victory	Saratoga	497	488	520	West Glens Falls (U)	Warren	2,725	1,685	...
Victory Heights (U)	Chemung	2,528	1,857	...	Westhampton Beach	Suffolk	1,440	1,087	989
Village of the Branch	Suffolk	886	183	185	West Haverstraw	Rockland	5,020	3,099	2,933
Voorheesville	Albany	1,228	895	717	West Hempstead-Lakeview (U)	Nassau	34,783	...	...
Waddington	St. Lawrence	921	819	872	Westport	Essex	723	733	634
Walden	Orange	4,851	4,599	4,243	West Seneca (U)	Erie	23,138	...	...
Wallkill (U)	Ulster	1,215	1,145	...	West Winfield	Herkimer	960	832	734
Walton	Delaware	3,853	3,947	3,697	Whitehall	Washington	4,016	4,497	4,831
Wampsville	Madison	364	379	282	White Plains	Westchester	50,483	43,466	40,327
Wantagh (U)	Nassau	34,172	...	...	Whitesboro	Oneida	4,784	3,902	3,832
Wappingers Falls	Dutchess	4,447	3,480	3,427	Whitney Point	Broome	1,049	883	733
Warrensburg (U)	Warren	2,240	2,258	...	Williamson (U)	Wayne	1,690	1,520	...
Warsaw	Wyoming	3,653	3,723	3,934	Williamsville	Erie	6,316	4,640	3,614
Warwick	Orange	3,218	2,674	2,534	Williston Park	Nassau	8,293	7,305	3,730
Washington Heights (U)	Orange	1,231	...	...	Wilson	Niagara	1,320	962	849
Washingtonville	Orange	1,178	823	803	Windsor	Broome	1,026	822	766
Waterford	Saratoga	2,915	2,968	2,903	Winona Lakes (U)	Orange	1,655	...	...
Waterloo	Seneca	3,098	4,438	4,010	Wolcott	Wayne	1,641	1,316	1,326
Watertown	Jefferson	33,306	34,350	33,385	Woodhull	Steuben	321	332	339
Waterville	Oneida	1,901	1,634	1,489	Woodmere (U)	Nassau	14,011	...	...
Watervliet	Albany	15,917	15,197	14,114	Woodridge	Sullivan	1,034	951	854
Watkins Glen	Schuyler	2,813	3,052	2,913	Woodsburgh	Nassau	907	745	702
Waverly	Tioga	5,930	6,037	5,450	Wurtsboro	Sullivan	655	628	487
Wayland	Steuben	2,003	1,834	1,795	Wyoming	Wyoming	526	508	430
Webster	Monroe	3,060	1,773	1,680	Yonkers	Westchester	190,634	152,798	142,598
Weedsport	Cayuga	1,731	1,388	1,341	Yorktown (U)	Westchester	3,576	...	...
Wellsburg	Chemung	643	638	560	Yorktown Heights (U)	Westchester	2,478	...	...
Wellsville	Allegany	5,967	6,402	5,942	Yorkville	Oneida	3,749	3,528	3,311
Westbury	Nassau	14,797	7,113	4,524	Youngstown	Niagara	1,848	932	799
West Carthage	Jefferson	2,167	2,000	1,767					

Table 9.—1960 POPULATION OF AREAS ANNEXED BETWEEN 1950 AND 1960 BY INCORPORATED PLACES HAVING 2,500 INHABITANTS OR MORE IN 1950

[Minus sign (-) denotes decrease]

Incorporated place	1960 population			1950 population, total	Increase, 1950 to 1960, in 1950 area
	Total	In 1950 area	In annexed area		
Attica	2,738	2,729	29	2,676	53
Baldwinsville	5,965	5,376	609	4,495	881
Batavia	18,210	18,177	33	17,799	378
Binghamton	75,941	75,941	...	80,674	-4,733
Blasdell	5,909	5,909	...	5,127	782
Brockport	5,256	5,256	...	4,748	508
Canajoharie	2,681	2,665	16	2,761	-96
Canastota	4,896	4,896	...	4,458	438
Cedarhurst	6,954	6,832	122	6,051	781
Corning	17,085	16,973	112	17,684	-711
Dansville	5,460	5,460	...	5,253	207
Dunkirk	18,205	18,205	...	18,007	198
East Rochester	8,152	8,082	70	7,022	1,060
East Rockaway	10,721	10,273	448	7,970	2,303
Ellenville	5,003	4,643	360	4,225	418
Elmira	46,517	46,517	...	49,716	-3,199
Fairport	5,507	5,499	8	5,267	232
Falconer	3,343	3,338	5	3,292	46
Fayetteville	4,311	3,619	692	2,634	995
Floral Park	17,499	17,499	...	14,582	2,917
Freeport	34,419	33,780	639	24,680	9,100
Fulton	14,261	14,221	40	13,922	244
Garden City	23,948	23,896	52	14,486	9,462
Geneva	17,286	17,286	...	17,144	142
Goshen	3,906	2,891	1,015	3,311	-420
Gouverneur	4,946	4,908	38	4,916	-8
Granville	3,352	3,352	...	3,289	63
Hamburg	9,145	8,301	844	6,938	1,363
Hamilton	3,348	3,347	1	3,507	-160
Hempstead	34,641	34,641	...	29,135	5,506
Highland Falls	4,469	4,469	...	3,930	539
Hornell	13,907	13,907	...	15,049	-1,142
Horseheads	7,207	5,895	1,312	3,606	2,289
Ithaca	28,799	28,253	546	29,277	-1,004

Incorporated place	1960 population			1950 population, total	Increase, 1950 to 1960, in 1950 area
	Total	In 1950 area	In annexed area		
Liverpool	3,487	3,445	42	2,933	512
Lockport	26,443	26,443	...	25,133	1,310
Lowville	3,616	3,616	...	3,671	-55
Malone	8,737	8,610	127	9,501	-891
Malverne	9,968	9,819	149	8,086	1,733
Mamaroneck	17,673	17,646	27	15,016	2,630
Massena	15,478	15,386	92	13,137	2,249
Medina	6,681	6,661	20	6,179	482
Middletown	23,475	22,352	1,123	22,386	-234
Minoa	20,519	19,999	520	14,831	5,168
Monticello	5,222	4,601	621	4,223	378
Newark	12,868	12,062	806	10,295	1,767
Niagara Falls	102,394	100,720	1,674	90,872	9,848
North Tarrytown	8,818	8,771	47	8,740	31
Nyack	6,062	6,010	52	5,889	121
Ogdensburg	16,122	16,122	...	16,166	-44
Ossining	18,662	18,662	...	16,098	2,564
Patchogue	8,838	8,774	64	7,361	1,413
Penn Yan	5,770	5,743	27	5,481	262
Pleasantville	5,877	5,692	185	4,861	831
Rochester	318,611	318,593	18	332,488	-13,895
Rockville Centre	26,355	26,199	156	22,362	3,837
Saranac Lake	6,421	6,410	11	6,913	-503
Sidney	5,197	4,817	340	4,815	2
South Glens Falls	4,129	3,947	182	3,645	302
Spring Valley	6,338	5,396	942	4,900	1,496
Suffern	5,094	4,635	459	4,010	625
Syracuse	216,038	215,817	221	220,583	-4,766
Utica	100,410	99,938	472	101,331	-1,393
Wappingers Falls	4,447	4,263	184	3,490	773
Warwick	3,218	2,835	383	2,674	161
Watertown	33,306	33,306	...	34,350	-1,044
Wellsville	5,967	5,823	144	6,402	-579
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1,317

[fol. 32ff]

[illegible] township	24,68[illegible]	[illegible],7[illegible]
Tenafly borough	14,264	9,651
Tetertoro borough	22	26
Upper Saddle River borough	3,970	(1)
Waldwick borough	10,495	3,963
Wallington borough	9,261	8,910
Washington township	6,654	(1)
Westwood borough	9,046	6,766
Woodcliff Lake borough	2,742	(2)
Wood-Ridge borough	7,964	6,283
Wyckoff township	11,205	2,319
Essex County (part)	920,659	899,232
Belleville town	35,005	32,019
Bloomfield town	51,887	49,307
Caldwell borough	6,942	6,270
Caldwell township (part)	434	(1)
Cedar Grove township	14,603	8,022
East Orange city	77,259	79,340
Essex Fells borough	2,174	1,617
Glen Ridge borough	8,322	7,620
Irvington town	59,379	59,201
Livingston township	23,124	7,687
Maplewood township	23,977	25,201
Millburn township	18,799	13,775
Montclair town	43,129	43,927
Newark city	405,220	438,776
North Caldwell borough	4,163	(1)
Nutley town	29,513	26,992
Orange city	35,789	38,037
Roseland borough	2,804	2,019
South Orange village	16,179	15,230
Verona borough	13,782	10,921
West Caldwell borough	8,314	4,466
West Orange town	39,895	28,805
Hudson County	610,734	647,431
Bayonne city	74,213	77,203
East Newark borough	1,872	2,173
Guttenberg town	5,118	5,366
Harrison town	11,743	13,490
Hoboken city	48,441	50,676
Jersey City	276,101	299,017
Kearny town	37,472	39,952
North Bergen township	42,387	41,554
Secaucus town	12,184	9,750
Union City	52,180	55,537
Weehawken township	13,904	14,830
West New York town	35,547	37,683
Middlesex County (part)	394,155	230,739
Carteret borough	20,502	13,030
Dunellen borough	6,840	6,291
East Brunswick township (part)	16,046	2,327
Edison township	44,799	10,824
Helmetta borough	779	580
Highland Park borough	11,049	9,721
Jamesburg borough	2,853	2,307
Madison township (part)	10,307	3,746
Metuchen borough	14,041	9,879
Middlesex borough	10,520	5,943
Milltown borough	5,435	3,786
Monroe township (part)	814	250
New Brunswick city	40,139	38,811
North Brunswick township (part)	7,514	3,684
Perth Amboy city	38,007	41,330
Piscataway township (part)	17,425	5,602
Sayreville borough	22,553	10,338
South Amboy city	8,422	8,422
South Plainfield borough	17,879	8,006
South River borough	13,397	11,306
Spotswood borough	5,758	2,325
Woodbridge township	78,846	32,227
Morris County (part)	189,851	93,732
Boonton town	7,981	7,163
Butler borough	5,414	4,050
Chatham borough	9,517	7,390
Chatham township (part)	4,943	392
Denville township (part)	7,660	2,783
Dover town	13,034	11,174
Florham Park borough	7,222	2,385
Hanover township (part)	6,805	(3)
Kinnelon borough	4,431	(4)
Lincoln Park borough	6,048	3,376
Madison borough	15,122	10,417

[illegible] township (part)	4,141	1,341
Riverdale borough	2,596	1,352
Roxbury borough	9,413	3,812
Roxbury township (part)	5,213	390
Victory Gardens borough	5,296	(3)
Wharton borough	1,083	(4)
	5,006	3,853
Passaic County (part)	396,461	322,283
Bloomingdale borough	5,293	3,251
Clifton city	82,084	64,511
Haledon borough	6,161	6,204
Hawthorne borough	17,735	14,816
Little Falls township	9,730	5,513
North Haledon borough	6,026	3,550
Passaic city	53,963	97,702
Paterson city	143,663	139,336
Pompton Lakes borough	9,445	4,634
Prospect Park borough	5,201	5,242
Ringwood borough	4,182	(1)
Totowa borough	10,897	6,045
Wanaque borough	7,126	4,222
Wayne township	29,353	3,306
West Paterson borough	7,602	3,931
Somerset County (part)	83,977	57,147
Bound Brook borough	10,263	8,374
Bridgewater township (part)	6,511	2,563
Franklin township (part)	10,430	3,422
Green Brook township (part)	2,852	(1)
Manville borough	10,995	8,597
North Plainfield borough	16,993	12,766
Raritan borough	6,137	5,131
Somerville borough	12,458	11,971
South Bound Brook borough	3,626	2,905
Watchung borough	3,312	1,481
Union County	504,255	393,327
Berkeley Heights township	8,721	622
Clark township	12,195	3,640
Cranford township	26,424	18,602
Elizabeth city	107,698	112,817
Fanwood borough	7,963	3,228
Garwood borough	5,426	4,622
Hillside township	22,304	21,007
Kenilworth borough	8,379	4,922
Linden city	39,931	30,644
Mountainside borough	6,325	2,046
New Providence borough	10,243	3,380
Plainfield city	45,330	42,366
Rahway city	27,699	21,290
Roselle borough	21,032	17,681
Roselle Park borough	12,546	11,537
Scotch Plains township	18,491	8,104
Springfield township	14,467	7,017
Summit city	23,877	17,929
Union township	51,499	37,906
Westfield town	31,447	21,263
Winfield township	2,458	2,719

ROCHESTER (N.Y.) URBANIZED AREA

The area	493,402	409,149
Rochester city	318,611	332,488
Outside central city	174,791	76,661

The area includes the following minor civil divisions and parts of minor civil divisions:

Monroe County (part)	493,402	409,149
Brighton town (part)	26,235	14,028
Chili town (part)	4,644	90
Gates town (part)	10,634	2,872
Greece town (part)	41,421	18,893
Irondequoit town	55,337	29,692
Penfield town (part)	5,862	(2)
Perinton town (part)	12,109	3,183
East Rochester village (part)	3,214	2,864
Fairport village	5,307	(2)
Pittsford town (part)	12,364	7,670
East Rochester village (part)	4,938	4,158
Pittsford village	1,749	1,668
Rochester city	318,611	332,488
Webster town (part)	6,165	233

1 Not in area in 1950.
2 Name changed from Saddle River since 1950.
3 Name changed from Raritan since 1950.
4 Incorporated since 1950.
5 Name changed from New Providence since 1950.

32FF

Warrensburg (V)	Warren	2,4[illegible]	2,[illegible]	...	[illegible]	[illegible]	...	...	
Warsaw	Wyoming	3,453	3,713	3,594	Williamsville	Erie	6,316	6,449	3,614
Warwick	Orange	3,218	2,674	2,594	Williston Park	Nassau	8,295	7,305	5,750
Washington Heights (V)	Orange	1,231	...	...	Wilson	Niagara	1,320	962	849
Waterford	Saratoga	1,178	823	881	Windsor	Broome	1,026	832	764
Waterford	Saratoga	2,919	2,948	2,983	Winona Lake (V)	Orange	1,433	...	...
Waterloo	Seneca	5,098	4,438	4,080					
Watertown	Jefferson	33,306	34,350	33,283	Wolcott	Wayne	1,441	1,316	1,326
Waterville	Oneida	1,901	1,634	1,489	Woodhull	Steuben	321	332	339
Watervliet	Albany	15,917	15,197	14,114	Woodmere (V)	Nassau	14,011	...	...
Watkins Glen	Schuyler	2,813	3,082	2,913	Woodridge	Sullivan	1,034	951	834
					Woodstock	Ulster	907	745	702
Wayland	Steuben	3,930	4,037	3,480					
Wayland	Steuben	2,003	1,834	1,793	Worcester	Otsego	1,[illegible]	1,[illegible]	1,[illegible]
Webster	Monroe	3,060	1,773	1,680	Wyoming	Wyoming	535	508	430
Weedsport	Cayuga	1,731	1,588	1,341	Yonkers	Westchester	190,634	152,798	148,598
Wellsburg	Chemung	643	638	580	Yorktown (T)	Westchester	3,576	...	...
					Yorktown Heights (V)	Westchester	2,478	...	...
Wellsville	Allegany	5,967	6,402	5,942	Yorkville	Oneida	3,749	3,528	3,311
Westbury	Nassau	14,737	7,112	4,524	Youngstown	Niagara	1,848	932	799
West Carthage	Jefferson	2,167	2,000	1,787					

Table 9.—1960 POPULATION OF AREAS ANNEXED BETWEEN 1950 AND 1960 BY INCORPORATED PLACES HAVING 2,500 INHABITANTS OR MORE IN 1950

[Minus sign (–) denotes decrease]

Incorporated place	1960 population			1950 population, total	Increase, 1950 to 1960, in 1950 area	Incorporated place	1960 population			1950 population, total	Increase, 1950 to 1960, in 1950 area
	Total	In 1950 area	In annexed area				Total	In 1950 area	In annexed area		
Attica	2,758	2,729	29	2,876	33	Liverpool	3,487	3,445	42	2,933	512
Baldwinsville	3,985	3,376	609	4,495	881	Lockport	26,443	26,443	...	25,133	1,310
Batavia	18,230	18,177	53	17,799	378	Lowville	3,616	3,616	...	3,671	-55
Binghamton	75,941	75,941	...	80,674	-4,733	Malone	8,737	8,610	127	9,301	-691
Blasdell	3,909	3,909	...	3,127	782	Malverne	9,968	9,819	149	8,086	1,733
Brockport	3,256	3,256	...	4,748	508	Mamaroneck	17,673	17,646	27	15,016	2,630
Canajoharie	2,681	2,665	16	2,781	-96	Massena	13,478	13,386	92	13,177	2,249
Canastota	4,896	4,896	...	4,458	438	Medina	6,681	6,661	20	6,179	482
Cedarhurst	6,954	6,832	122	6,051	781	Middletown	23,475	22,352	1,123	22,586	-234
Corning	17,085	16,973	112	17,684	-711	Mineola	20,319	19,999	320	14,831	5,168
Dansville	5,460	5,460	...	5,253	207	Monticello	5,222	4,601	621	4,223	378
Dunkirk	18,205	18,205	...	18,007	198	Newark	12,868	12,062	806	10,295	1,767
East Rochester	8,152	8,082	70	7,022	1,060	Niagara Falls	102,394	100,720	1,674	90,872	9,848
East Rockaway	10,721	10,273	448	7,970	2,303	North Tarrytown	8,818	8,771	47	8,740	31
Ellenville	5,003	4,643	360	4,225	418	Nyack	6,062	6,010	52	5,889	121
Elmira	46,317	46,317	...	49,716	-3,199	Ogdensburg	16,122	16,122	...	16,166	-44
Fairport	5,507	5,499	8	5,267	232	Oneonta	18,662	18,662	...	16,098	2,564
Falconer	3,343	3,338	5	3,292	46	Patchogue	8,838	8,774	64	7,361	1,413
Fayetteville	4,311	3,619	692	2,624	995	Penn Yan	5,770	5,743	27	5,481	262
Floral Park	17,499	17,499	...	14,582	2,917	Pleasantville	5,877	5,692	185	4,861	831
Freeport	34,419	33,780	639	24,680	9,100	Rochester	318,611	318,593	18	332,488	-13,895
Fulton	14,261	14,221	40	13,922	299	Rockville Centre	26,393	26,199	194	22,362	3,837
Garden City	23,968	23,896	52	14,486	9,41[illegible]	Saranac Lake	6,421	6,410	11	6,913	-503
Geneva	17,286	17,286	...	17,144	142	Sidney	5,177	4,817	360	4,815	2
Goshen	3,906	2,891	1,015	3,311	-420	South Glens Falls	4,129	3,947	182	3,645	302
Gouverneur	4,946	4,908	38	4,916	-8	Spring Valley	6,238	5,296	942	4,300	1,096
Gowanda	3,352	3,352	...	3,289	63	Suffern	5,084	4,633	459	4,010	625
Hamburg	9,165	8,301	864	6,938	1,363	Syracuse	216,038	215,817	221	220,583	-4,766
Hamilton	3,368	3,367	1	3,507	-140	Utica	100,410	99,938	472	101,531	-1,593
Hempstead	34,641	34,641	...	29,135	5,506	Wappingers Falls	4,447	4,263	184	3,490	773
Highland Falls	4,489	4,489	...	3,930	559						
Hornell	13,907	13,907	...	15,049	-1,142	Warwick	3,218	2,835	383	2,674	161
Horseheads	7,307	5,995	1,312	3,606	2,389	Watertown	33,306	33,306	...	34,350	-1,044
Ithaca	28,799	28,253	546	29,297	-1,004	Wellsville	5,967	5,823	144	6,402	-579
Liberty	4,704	4,704	...	4,658	46	West Haverstraw	5,020	4,416	604	3,099	1,317
Little Falls	8,935	8,907	28	9,541	-634	Williamsville	6,316	6,160	156	4,649	1,511

[fol. 32cc]

32cc

Table 10.—POPULATION OF URBANIZED AREAS: 1960 AND 1950

Area	1960	1950
ALBANY-SCHENECTADY-TROY (N.Y.) URBANIZED AREA		
The area	495,447	415,170
In central cities	298,900	299,091
Albany	129,726	134,995
Schenectady	81,682	91,785
Troy	67,492	72,311
Outside central cities	196,547	116,079
The area includes the following minor civil divisions and parts of minor civil divisions:		
Albany County (part)	228,010	198,117
Albany city	129,726	134,995
Bethlehem town (part)	10,801	5,397
Cohoes city	20,129	21,272
Colonie town (part)	42,858	16,268
Colonie village	6,992	2,088
Menands village	2,114	2,453
Green Island town	3,533	4,016
Green Island village	3,533	4,016
Guilderland town (part)	7,046	1,052
Watervliet city	13,917	19,197
Rensselaer County (part)	88,124	90,099
Brunswick town (part)	2,000	1,362
East Greenbush town (part)	4,862	3,244
North Greenbush town (part)	2,445	1,423
Rensselaer city	10,506	10,896
Schaghticoke town (part)	819	721
Troy city	67,492	72,311
Saratoga County (part)	7,137	5,474
Ballston town (part)	1,528	(2)
Waterford town (part)	5,609	5,474
Waterford village	2,915	2,988
Schenectady County (part)	132,176	121,480
Glenville town (part)	17,878	10,112
Scotia village	7,625	7,812
Niskayuna town (part)	10,522	6,133
Rotterdam town (part)	22,094	13,430
Rotterdam (U)	14,871	(2)
Schenectady city	81,682	91,785
BINGHAMTON (N.Y.) URBANIZED AREA		
The area	158,141	144,011
Binghamton city	75,941	80,674
Outside central city	82,200	63,337
The area includes the following minor civil divisions and parts of minor civil divisions:		
Broome County (part)	158,141	144,011
Binghamton city	75,941	80,674
Binghamton town (part)	797	(2)
Chenango town (part)	4,734	2,114
Conklin town (part)	1,663	(2)
Dickinson town (part)	4,796	3,641
Port Dickinson village	2,295	2,199
Fenton town (part)	3,611	2,004
Union town (part)	58,772	51,366
Endicott village	18,775	20,050
Johnson City village	19,118	19,249
Vestal town (part)	7,867	4,212
BUFFALO (N.Y.) URBANIZED AREA		
The area	1,054,370	895,669
In central city	532,759	671,004
Buffalo	532,759	580,132
Niagara Falls	(2)	90,872
Outside central city	521,611	224,659
The area includes the following minor civil divisions and parts of minor civil divisions:		
Erie County (part)	901,597	773,312
Amherst town (part)	31,123	26,758
Eggertsville (U)	44,807	(2)
Williamsville village	6,316	4,649
Buffalo city	532,759	580,132
Cheektowaga town (part)	81,036	59,413
Cheektowaga-Northeast (U)	52,362	(2)
Cheektowaga-Southeast (U)	12,766	(2)
Depew village (part)	7,359	2,058
Sloan village	5,803	4,686
Evans town (part)	1,902	(2)
Grand Island town (part)	4,216	438
Hamburg town (part)	10,000	3,000
Hamburg village	5,000	2,000
Lackawanna city	29,564	25,978
Lancaster town (part)	3,000	1,000
Lancaster village	2,000	1,000
Tonawanda city	21,241	14,617
Tonawanda town	105,032	51,545
Kenmore village	23,261	20,084
Tonawanda (U)	83,771	(2)
West Seneca town (part)	29,973	10,143
West Seneca (U)	23,138	(2)
Niagara County (part)	132,773	122,351
Lewiston town (part)	7,739	3,463
Lewiston village	3,320	1,626
Niagara town (part)	6,786	2,704
Niagara Falls city	102,394	90,872
North Tonawanda city	34,797	24,731
Wheatfield town (part)	1,097	581
NEW YORK-NORTHEASTERN NEW JERSEY (N.Y.-N.J.) URBANIZED AREA		
The area	14,114,927	12,296,117
In central cities	8,763,015	8,629,750
New York	7,781,984	7,891,957
Newark	405,220	438,776
Jersey City	276,101	299,017
Paterson	143,663	(2)
Clifton	82,084	(2)
Passaic	53,963	(2)
Outside central cities	5,371,912	3,666,367
The area includes the following minor civil divisions and parts of minor civil divisions:		
In New York	10,236,000	9,120,255
Bronx County	1,424,815	1,451,277
Bronx Borough	1,424,815	1,451,277
Kings County	2,627,319	2,738,175
Brooklyn Borough	2,627,319	2,738,175
Nassau County (part)	1,393,450	618,887
Glen Cove city	23,817	15,130
Hempstead town	740,738	416,634
Baldwin (U)	30,204	(2)
Bellerose village	1,083	1,134
Bellmore (U)	12,784	(2)
Cedarhurst village	6,954	6,031
East Meadow (U)	44,036	(2)
East Rockaway village	10,721	7,970
Elmont (U)	30,138	(2)
Floral Park village (part)	15,121	12,183
Franklin Square (U)	32,483	(2)
Freeport village	34,419	24,680
Garden City village (part)	23,946	14,368
Hempstead village	34,641	29,135
Hewlett Bay Park village	920	466
Hewlett Harbor village	1,610	(2)
Hewlett Neck village	507	369
Inwood (U)	10,362	(2)
Island Park village	3,846	2,031
Lawrence village	5,907	4,683
Levittown (U)	65,276	(2)
Lynbrook village	19,881	17,314
Malverne village	9,968	8,086
Merrick (U)	18,789	(2)
Miscola village (part)	68	27
New Hyde Park village (part)	4,429	2,747
North Bellmore (U)	19,639	(2)
North Merrick (U)	12,976	(2)
North Valley Stream (U)	17,239	(2)
Oceanside (U)	30,448	(2)
Rockville Centre village	26,355	22,362
Roosevelt (U)	12,683	(2)
Seaford (U)	14,718	(2)
South Floral Park village	1,080	772
South Westbury (U)	11,977	(2)
Stewart Manor village	2,422	1,879
Uniondale (U)	20,061	(2)
Valley Stream village	38,429	26,834
Wantagh (U)	34,172	(2)
West Hempstead-Lakeview (U)	24,783	(2)
Woodmere (U)	14,011	(2)
Woodsburgh village	907	743
Long Beach city	26,473	19,386
North Hempstead town	219,088	138,701
Baxter Estates village	932	862
East Hills village	7,184	2,547
Oyster Bay town (part)	11,041	2,123
North Syracuse village (part)	5,151	2,123
De Witt town (part)	16,929	9,651
East Syracuse village	4,708	4,766
Geddes town (part)	19,019	11,189
Solvay village	8,732	7,864
Lysander town (part)	538	(2)
Manlius town (part)	12,893	1,008
Fayetteville village	4,311	(2)
Manlius village	1,997	(2)
Minoa village	1,836	1,008
Onondaga town (part)	4,942	1,973
Salina town (part)	31,924	16,049
Liverpool village	3,497	2,933
Syracuse city	216,038	220,583
Oneida County (part)	117,313	117,327
Deerfield town (part)	2,228	(2)
Lee town (part)	1,678	(2)
Marcy town (part)	355	(2)
New Hartford town (part)	13,834	5,033
New Hartford village	2,488	1,947
New York Mills village (part)	1,825	1,380
Rome city	51,446	(2)
Utica city	100,410	101,531
Western town (part)	142	(2)
Whitestown town (part)	17,030	10,793
New York Mills village (part)	2,183	1,986
Oriskany village	1,380	1,346
Whitesboro village	4,784	3,932
Yorkville village	3,749	3,528

[1] Not in area in 1950.
[2] Includes population (97) of part of Frankfort town not included in area in 1960.

Table 11.—POPULATION OF STANDARD METROPOLITAN STATISTICAL AREAS: 1960 AND 1950

[Data relate to areas as defined for 1960. Minus sign (-) denotes decrease]

Standard metropolitan statistical area, central city, and other component areas	1960	1950	Increase	
			Number	Percent
ALBANY-SCHENECTADY-TROY, N.Y.				
Total	657,203	589,359	68,144	11.6
In central cities	298,900	299,091	-20,191	-6.8
Albany	129,726	134,995	-5,269	-3.9
Schenectady	81,682	91,785	-10,103	-11.0
Troy	67,492	72,311	-4,819	-6.7
Outside central cities	358,603	290,268	68,335	23.4
Albany County	272,926	239,386	33,540	14.0
Rensselaer County	142,385	132,407	9,978	7.5
Saratoga County	89,096	74,869	14,227	19.0
Schenectady County	152,896	142,497	10,399	7.3
BINGHAMTON, N.Y. (Broome County)				
Total	212,661	184,698	27,963	15.1
Binghamton city	75,941	80,674	-4,733	-5.9
Outside central city	136,720	104,024	32,696	31.4
BUFFALO, N.Y.				
Total	1,306,957	1,089,230	217,727	20.0
Buffalo city	532,759	580,132	-47,373	-8.2
Outside central city	774,198	509,098	265,100	52.1
Erie County	1,064,688	899,238	165,450	18.4
Niagara County	242,269	189,992	52,277	27.5
NEW YORK, N.Y.				
Total	10,694,633	9,555,943	1,138,690	11.9
New York City	7,781,984	7,891,957	-109,973	-1.4
Outside central city	2,912,649	1,663,986	1,248,663	75.0
New York City	7,781,984	7,891,957	-109,973	-1.4
Bronx County	1,424,815	1,451,277	-26,462	-1.8
Kings County	2,627,319	2,738,175	-110,856	-4.0
New York County	1,698,281	1,960,101	-261,820	-13.4
Queens County	1,809,578	1,550,849	258,729	16.7
Richmond County	221,991	191,555	30,436	15.9
Nassau County	1,300,171	672,765	627,406	93.3
Rockland County	136,803	89,276	47,527	53.2
Suffolk County	666,784	276,129	390,655	141.5
Westchester County	808,891	625,816	183,075	29.3
ROCHESTER, N.Y. (Monroe County)				
Total	586,387	487,632	98,755	20.3
Rochester city	318,611	332,488	-13,877	-4.2
Outside central city	267,776	155,144	112,632	72.6
SYRACUSE, N.Y.				
Total	563,781	465,114	98,667	21.2
Syracuse city	216,038	220,583	-4,545	-2.1
Outside central city	347,743	244,531	103,212	42.2
Madison County	54,635	46,214	8,421	18.2
Onondaga County	423,028	341,719	81,309	23.8
Oswego County	86,118	77,181	8,937	11.6
UTICA-ROME, N.Y.				
Total	330,771	284,262	46,509	16.4
In central cities	132,056	143,213	-8,843	6.2
Utica	100,410	101,531	-1,121	-1.1
Rome	31,646	41,682	9,964	23.9
Outside central cities	198,715	141,049	57,666	26.7
Herkimer County	66,370	61,407	4,963	8.1
Oneida County	264,401	222,855	41,546	18.6

[fol. 32dd]

32 dd

Albany city	[illegible]	[illegible]
Bethlehem town (part)	10,801	5,337
Cohoes city	20,129	21,372
Colonie town (part)	43,898	34,248
Colonie village	6,982	2,068
Menands village	2,314	2,493
Green Island town	3,333	4,016
Green Island village	3,333	4,016
Guilderland town (part)	7,046	1,032
Watervliet city	13,917	15,197
Rensselaer County (part)	88,124	90,099
Brunswick town (part)	2,000	1,342
East Greenbush town (part)	4,862	3,246
North Greenbush town (part)	2,445	1,623
Rensselaer city	10,906	10,896
Schaghticoke town (part)	819	721
Troy city	67,492	72,321
Saratoga County (part)	7,137	5,474
Ballston town (part)	1,528	(3)
Waterford town (part)	5,609	5,474
Waterford village	2,915	2,968
Schenectady County (part)	132,176	121,480
Glenville town (part)	17,878	10,112
Scotia village	7,425	7,812
Niskayuna town (part)	10,522	6,133
Rotterdam town (part)	22,094	13,490
Rotterdam (U)	16,871	(3)
Schenectady city	81,482	91,785
BINGHAMTON (N.Y.) URBANIZED AREA		
The area	156,141	144,011
Binghamton city	75,941	80,674
Outside central city	82,200	63,337
The area includes the following minor civil divisions and parts of minor civil divisions:		
Broome County (part)	155,141	144,011
Binghamton city	75,941	80,674
Binghamton town (part)	737	(3)
Chenango town (part)	4,734	2,114
Conklin town (part)	1,663	(3)
Dickinson town (part)	4,796	3,441
Port Dickinson village	2,295	2,199
Fenton town (part)	3,611	2,004
Union town (part)	58,772	51,366
Endicott village	18,775	20,050
Johnson City village	19,118	19,249
Vestal town (part)	7,867	4,212
BUFFALO (N.Y.) URBANIZED AREA		
The area	1,054,370	895,663
In central city	532,759	671,004
Buffalo	532,759	580,132
Niagara Falls	(3)	90,872
Outside central city	521,611	224,659
The area includes the following minor civil divisions and parts of minor civil divisions:		
Erie County (part)	901,597	773,312
Amherst town (part)	51,123	38,758
Eggertsville (U)	44,807	(3)
Williamsville village	6,316	4,649
Buffalo city	532,759	580,132
Cheektowaga town (part)	81,036	39,413
Cheektowaga-Northeast (U)	52,362	(3)
Cheektowaga-Southeast (U)	12,746	(3)
Depew village (part)	7,399	2,088
Sloan village	5,803	4,696
Evans town (part)	1,902	(3)
Grand Island town (part)	4,216	438
Hamburg town (part)	21,334	8,784
Blasdell village	3,909	3,127
Hamburg-Lake Shore (U)	11,527	(3)
Lackawanna city	29,564	27,638
Lancaster town (part)	19,068	13,824
Depew village (part)	6,221	5,159
Lancaster village	12,254	8,665
Niagara town (part)	6,726	2,704
Niagara Falls city	102,394	90,872
North Tonawanda city	34,737	34,731
Wheatfield town (part)	1,097	381
NEW YORK-NORTHEASTERN NEW JERSEY (N.Y.-N.J.) URBANIZED AREA		
The area	14,114,927	12,296,117
In central cities	8,963,015	8,629,720
New York	7,781,984	7,891,957
Newark	405,220	438,776
Jersey City	276,101	299,017
Paterson	143,663	(3)
Clifton	82,084	(3)
Passaic	53,963	(3)
Outside central cities	5,371,912	3,666,397
The area includes the following minor civil divisions and parts of minor civil divisions:		
In New York	10,236,000	9,130,205
Bronx County	1,424,815	1,451,277
Bronx Borough	1,424,815	1,451,277
Kings County	2,627,319	2,738,175
Brooklyn Borough	2,627,319	2,738,175
Nassau County (part)	1,299,830	618,897
Glen Cove city	23,817	15,130
Hempstead town	740,738	416,694
Baldwin (U)	30,204	(3)
Bellerose village	1,083	1,138
Bellmore (U)	12,784	(3)
Cedarhurst village	6,934	6,051
East Meadow (U)	44,036	(3)
East Rockaway village	10,721	7,970
Elmont (U)	30,138	(3)
Floral Park village (part)	15,121	12,183
Franklin Square (U)	32,483	(3)
Freeport village	34,419	24,680
Garden City village (part)	23,946	14,368
Hempstead village	34,641	29,135
Hewlett Bay Park village	920	446
Hewlett Harbor village	1,610	(3)
Hewlett Neck village	307	289
Inwood (U)	10,362	(3)
Island Park village	3,846	2,031
Lawrence village	5,907	4,681
Levittown (U)	65,276	(3)
Lynbrook village	19,881	17,314
Malverne village	9,968	8,084
Merrick (U)	18,789	(3)
Mineola village (part)	68	27
New Hyde Park village (part)	4,429	2,747
North Bellmore (U)	19,639	(3)
North Merrick (U)	12,976	(3)
North Valley Stream (U)	17,239	(3)
Oceanside (U)	30,448	(3)
Rockville Centre village	26,355	22,362
Roosevelt (U)	12,883	(3)
Seaford (U)	14,718	(3)
South Floral Park village	1,090	972
South Westbury (U)	11,977	(4)
Stewart Manor village	2,432	1,879
Uniondale (U)	20,041	(3)
Valley Stream village	38,429	36,894
Wantagh (U)	24,172	(3)
West Hempstead-Lakeview (U)	24,783	(3)
Woodmere (U)	14,011	(3)
Woodsburgh village	907	745
Long Beach city	26,473	15,384
North Hempstead town	219,088	136,701
Barker Estates village	932	862
East Hills village	7,184	2,947
East Williston village	2,940	1,734
Floral Park village (part)	2,378	2,399
Flower Hill village	4,594	1,948
Garden City village (part)	2	118
Garden City Park-Herricks (U)	15,364	(3)
Great Neck village	10,171	7,759
Great Neck Estates village	3,262	2,464

[fol. 32dd]

72

[illegible]

1 There were separate urbanized areas delineated for Albany-Troy and Schenectady for the 1950 Census. Data represent the combined figures for the two areas.
2 Not in area in 1950.
3 There were no unincorporated places delineated in the urbanized areas for the 1950 Census.
4 There was a separate urbanized area delineated for Niagara Falls for the 1950 Census. Data represent the combined figures for the Buffalo and Niagara Falls areas.
5 Not a central city in the 1960 Census.
6 Not a central city in the 1950 Census.

32dd

Table 18.—POPULATION OF URBANIZED AREAS: 1960 AND 1950—Con.

Area	1960	1950
NEW YORK-NORTHEASTERN NEW JERSEY (N.Y.-N.J.) URBANIZED AREA—Con.		
In New York—Con.		
Nassau County (part)—Con.		
North Hempstead town—Con.		
Great Neck Plaza village	4,948	4,346
Kensington village	1,166	978
Kings Point village	5,410	2,443
Lake Success village	2,954	1,384
Manorhaven village	2,386	1,819
Manorhaven village (part)	20,451	14,804
Munsey Park village	2,847	2,048
New Hyde Park village (part)	6,379	4,802
North Hills village	359	(1)
North New Hyde Park (U)	17,929	(2)
Old Westbury village (part)	1,736	(1)
Plandome village	1,379	1,102
Plandome Heights village	1,025	882
Plandome Manor village	705	323
Port Washington (U)	15,697	(2)
Port Washington North village	722	630
Roslyn village	2,681	1,612
Roslyn Estates village	1,289	612
Roslyn Harbor village (part)	804	(2)
Russell Gardens village	1,156	912
Saddle Rock village	1,109	33
Sands Point village	2,161	(1)
Thomaston village	2,767	2,045
Westbury village	14,739	7,112
Williston Park village	8,255	7,305
Oyster Bay town (part)	285,534	34,836
Bayville village	3,962	(1)
Bethpage-Old Bethpage (U)	20,515	(2)
Brookville village	1,448	(1)
East Massapequa (U)	14,779	(2)
Farmingdale village	6,128	4,492
Hicksville (U)	30,405	(2)
Jericho (U)	10,795	(2)
Lattingtown village	1,461	(1)
Locust Grove (U)	11,558	(2)
Massapequa (U)	32,900	(2)
Massapequa Park village	19,904	(1)
Matinecock village	634	(1)
Mill Neck village	701	(1)
Mattituck village	1,265	(1)
Old Brookville village	1,126	(1)
Old Westbury village (part)	308	(1)
Plainedge (U)	21,973	(2)
Plainview (U)	27,710	(2)
Roslyn Harbor village (part)	121	(1)
Sea Cliff village	5,669	4,866
South Farmingdale (U)	16,318	(2)
Upper Brookville village	1,045	(1)
New York County	1,698,281	1,960,101
Manhattan borough	1,698,281	1,960,101
Putnam County (part)	332	(1)
Putnam Valley town (part)	332	...
Queens County	1,809,578	1,550,849
Queens borough	1,809,578	1,550,849
Richmond County	221,991	191,555
Richmond borough	221,991	191,555
Rockland County (part)	87,244	30,134
Clarkstown town (part)	29,034	2,616
Nyack village (part)	52	(1)
Spring Valley village (part)	497	(1)
Upper Nyack village	1,832	1,195
Orangetown town (part)	41,053	22,296
Grand View-on-Hudson village	330	302
Nyack village (part)	6,010	5,889
Piermont village	1,906	1,897
South Nyack village	3,113	3,102
Ramapo town (part)	21,157	5,225
Hillburn village	1,114	1,213
Spring Valley village (part)	5,881	(1)
Suffern village	9,094	4,010
Suffolk County (part)	324,867	29,397
Babylon town (part)	141,455	28,943
Amityville village	8,318	6,164
Babylon village	11,062	6,015
Copiague (U)	14,081	(2)
Deer Park (U)	16,726	(2)
Lindenhurst village	20,905	8,644
Brookhaven town (part)	21,408	(1)

Area	1960	1950
NEW YORK-NORTHEASTERN NEW JERSEY (N.Y.-N.J.) URBANIZED AREA—Con.		
In New York—Con.		
Westchester County (part)—Con.		
Bronxville village	6,744	6,778
Tuckahoe village	6,423	5,981
Greenburgh town	76,213	45,080
Ardsley village	3,991	1,744
Dobbs Ferry village	9,280	6,288
Elmsford village	3,795	3,147
Hastings-on-Hudson village	8,979	7,365
Irvington village	5,484	3,657
Tarrytown village	11,109	8,831
Harrison town (part)	16,757	11,255
Mamaroneck town	29,107	25,103
Larchmont village	6,789	6,330
Mamaroneck village (part)	10,555	8,831
Mount Pleasant town (part)	29,697	21,694
Briarcliff Manor village (part)	535	407
North Tarrytown village	8,818	8,740
Pleasantville village	5,877	4,861
Mount Vernon city	76,010	71,899
New Castle town (part)	6,695	4,795
Mount Kisco village (part)	4,225	3,490
New Rochelle city	76,812	59,725
North Castle town (part)	1,843	1,355
Greenburgh town (part)	25,395	18,636
Briarcliff Manor village (part)	4,970	2,087
Ossining village	18,662	16,098
Peekskill city	18,737	(1)
Pelham town	13,404	12,195
North Pelham village	5,328	5,046
Pelham village	1,984	1,843
Pelham Manor village	6,114	5,306
Rye city	14,225	11,721
Rye town (part)	37,436	32,564
Mamaroneck village (part)	7,118	6,165
Port Chester village	24,960	23,970
Scarsdale town	17,968	13,156
Scarsdale village	17,968	13,156
White Plains city	50,485	43,446
Yonkers city	190,634	152,798
Yorktown town (part)	1,529	(1)
In New Jersey	1,878,897	1,165,912
Bergen County (part)	777,205	522,026
Allendale borough	4,082	2,409
Alpine borough	921	(1)
Bergenfield borough	27,203	17,647
Bogota borough	7,963	7,662
Carlstadt borough	6,042	5,581
Cliffside Park borough	17,642	17,116
Closter borough	7,767	3,376
Cresskill borough	7,290	3,534
Demarest borough	4,231	1,786
Dumont borough	18,882	13,013
East Paterson borough	19,344	15,386
East Rutherford borough	7,769	7,438
Edgewater borough	4,113	3,932
Emerson borough	6,849	1,744
Englewood city	26,037	23,145
Englewood Cliffs borough	2,913	968
Fair Lawn borough	36,421	23,885
Fairview borough	9,399	8,661
Fort Lee borough	21,813	11,648
Franklin Lakes borough	3,316	(1)
Garfield city	29,253	27,550
Glen Rock borough	12,896	7,143
Hackensack city	30,521	29,219
Harrington Park borough	3,581	1,634
Hasbrouck Heights borough	13,046	9,181
Haworth borough	3,215	1,612
Hillsdale borough	8,734	4,127
Hohokus borough	3,988	2,254
Leonia borough	8,384	7,378
Little Ferry borough	6,175	4,355
Lodi borough	23,502	15,392
Lyndhurst township	21,867	19,874
Mahwah township (part)	4,328	2,600
Maywood borough	11,460	8,667
Midland Park borough	7,343	5,184
Montvale borough	3,699	1,856
Moonachie borough	3,052	1,773
New Milford borough	18,810	6,006
North Arlington borough	17,477	15,970
Northvale borough	2,892	1,455
Norwood borough	2,852	1,792

[fol. 32ee]

Ramsey Park village	2,867	2,046
New Hyde Park village (part)	4,379	4,379
North Hills village	389	(1)
North New Hyde Park (V)	17,839	(2)
Old Westbury village (part)	1,756	(2)
Plandome village	1,979	1,102
Plandome Heights village	1,025	882
Plandome Manor village	703	123
Port Washington (V)	15,697	(2)
Port Washington North village	722	480
Roslyn village	2,681	1,612
Roslyn Estates village	1,289	412
Roslyn Harbor village (part)	804	(1)
Russell Gardens village	1,156	912
Saddle Rock village	1,109	32
Sands Point village	2,161	(1)
Thomaston village	2,787	2,045
Westbury village	14,797	7,112
Williston Park village	8,293	7,305
Oyster Bay town (part)	285,534	34,836
Bayville village	3,962	(2)
Bethpage-Old Bethpage (V)	20,315	(2)
Brookville village	1,448	(2)
East Massapequa (V)	14,779	(2)
Farmingdale village	6,128	4,492
Hicksville (V)	30,405	(2)
Jericho (V)	10,795	(2)
Lattingtown village	1,441	(2)
Locust Grove (V)	11,558	(2)
Massapequa (V)	32,900	(2)
Massapequa Park village	19,904	(2)
Matinecock village	824	(2)
Mill Neck village	701	(2)
Mittineague village	1,265	(2)
Old Brookville village	1,126	(2)
Old Westbury village (part)	308	(2)
Plainedge (V)	21,973	(2)
Plainview (V)	27,710	(2)
Roslyn Harbor village (part)	121	(2)
Sea Cliff village	5,669	4,848
South Farmingdale (V)	16,318	(2)
Upper Brookville village	1,045	(2)
New York County	1,698,281	1,960,101
Manhattan Borough	1,698,281	1,960,101
Putnam County (part)	332	(1)
Putnam Valley town (part)	332	...
Queens County	1,809,578	1,550,849
Queens Borough	1,809,578	1,550,849
Richmond County	221,991	191,555
Richmond Borough	221,991	191,555
Rockland County (part)	87,264	30,134
Clarkstown town (part)	25,034	2,616
Nyack village (part)	52	...
Spring Valley village (part)	657	(1)
Upper Nyack village	1,833	1,195
Orangetown town (part)	41,053	22,294
Grand View-on-Hudson village	330	302
Nyack village (part)	6,010	3,889
Piermont village	1,906	1,897
South Nyack village	3,113	3,102
Ramapo town (part)	21,177	5,222
Hillburn village	1,114	1,112
Spring Valley village (part)	5,881	(1)
Suffern village	5,084	4,010
Suffolk County (part)	324,867	29,397
Babylon town (part)	141,455	28,945
Amityville village	8,318	6,164
Babylon village	11,042	6,015
Copiague (V)	14,081	(2)
Deer Park (V)	16,726	(2)
Lindenhurst village	20,905	8,644
Brookhaven town (part)	21,408	(1)
Patchogue village	8,838	...
Huntington town (part)	85	(1)
Islip town (part)	161,919	412
Brentwood (V)	13,387	(2)
Brightwaters village	3,193	(2)
Westchester County (part)	743,933	539,870
Bedford town (part)	7,619	2,417
Mount Kisco village (part)	2,980	2,417
Cortlandt town (part)	21,754	4,837
Buchanan village	2,019	(1)
Croton-on-Hudson village	6,812	4,837
Hastings-on-Hudson village	8,977	7,482
Irvington village	5,484	3,657
Tarrytown village	11,109	8,831
Harrison town (part)	16,737	11,299
Mamaroneck town	29,109	25,103
Larchmont village	6,789	6,330
Mamaroneck village (part)	10,328	8,031
Mount Pleasant town (part)	29,697	21,694
Briarcliff Manor village (part)	535	407
North Tarrytown village	8,818	8,740
Pleasantville village	5,877	4,861
Mount Vernon city	78,010	71,899
New Castle town (part)	6,895	4,795
Mount Kisco village (part)	4,225	3,690
New Rochelle city	76,812	59,723
North Castle town (part)	1,843	1,335
Ossining town (part)	25,395	18,636
Briarcliff Manor village (part)	4,970	2,087
Ossining village	18,662	14,088
Peekskill city	18,737	(1)
Pelham town	13,404	12,193
North Pelham village	5,328	5,044
Pelham village	1,984	1,843
Pelham Manor village	6,114	5,306
Rye city	14,225	11,721
Rye town (part)	37,436	32,564
Mamaroneck village (part)	7,118	6,145
Port Chester village	24,940	23,970
Scarsdale town	17,948	13,136
Scarsdale village	17,948	13,136
White Plains city	50,485	43,444
Yonkers city	190,634	152,798
Yorktown town (part)	1,529	(1)
In New Jersey	3,878,897	3,165,912
Bergen County (part)	777,205	522,026
Allendale borough	4,082	2,409
Alpine borough	921	(1)
Bergenfield borough	27,203	17,647
Bogota borough	7,965	7,662
Carlstadt borough	6,042	3,791
Cliffside Park borough	17,642	17,118
Closter borough	7,767	3,776
Cresskill borough	7,290	3,324
Demarest borough	4,231	1,786
Dumont borough	18,882	13,013
East Paterson borough	19,344	19,386
East Rutherford borough	7,769	7,438
Edgewater borough	4,113	3,932
Emerson borough	6,849	1,744
Englewood city	26,037	23,143
Englewood Cliffs borough	2,913	948
Fair Lawn borough	36,421	23,883
Fairview borough	9,399	8,661
Fort Lee borough	21,815	11,848
Franklin Lakes borough	3,316	(1)
Garfield city	29,253	27,550
Glen Rock borough	12,896	7,145
Hackensack city	30,521	29,219
Harrington Park borough	3,581	1,434
Hasbrouck Heights borough	13,046	9,181
Haworth borough	3,213	1,612
Hillsdale borough	8,734	4,127
Hoboken borough	3,988	2,254
Leonia borough	8,384	7,378
Little Ferry borough	6,175	4,935
Lodi borough	23,302	15,382
Lyndhurst township	21,847	19,874
Mahwah township (part)	4,326	2,800
Maywood borough	11,460	8,667
Midland Park borough	7,543	5,144
Montvale borough	3,699	1,836
Moonachie borough	1,052	1,773
New Milford borough	18,810	6,006
North Arlington borough	17,477	13,970
Northvale borough	2,892	1,435
Norwood borough	2,832	1,792
Oakland borough	9,446	(1)
Old Tappan borough	2,330	(1)
Oradell borough	7,487	3,665
Palisades Park borough	11,943	9,633
Paramus borough	23,238	6,268
Park Ridge borough	6,389	3,189
Ramsey borough	9,527	4,670
Ridgefield borough	10,788	8,312
Ridgefield Park township	12,701	11,993
Ridgefield Park village	12,701	11,993
Ridgewood township	25,391	17,481
Ridgewood village	25,391	17,481

[1] Not in area in 1950.
[2] There were no unincorporated places delineated in the urbanized areas for the 1950 Census.

[fol. 32ee]

73

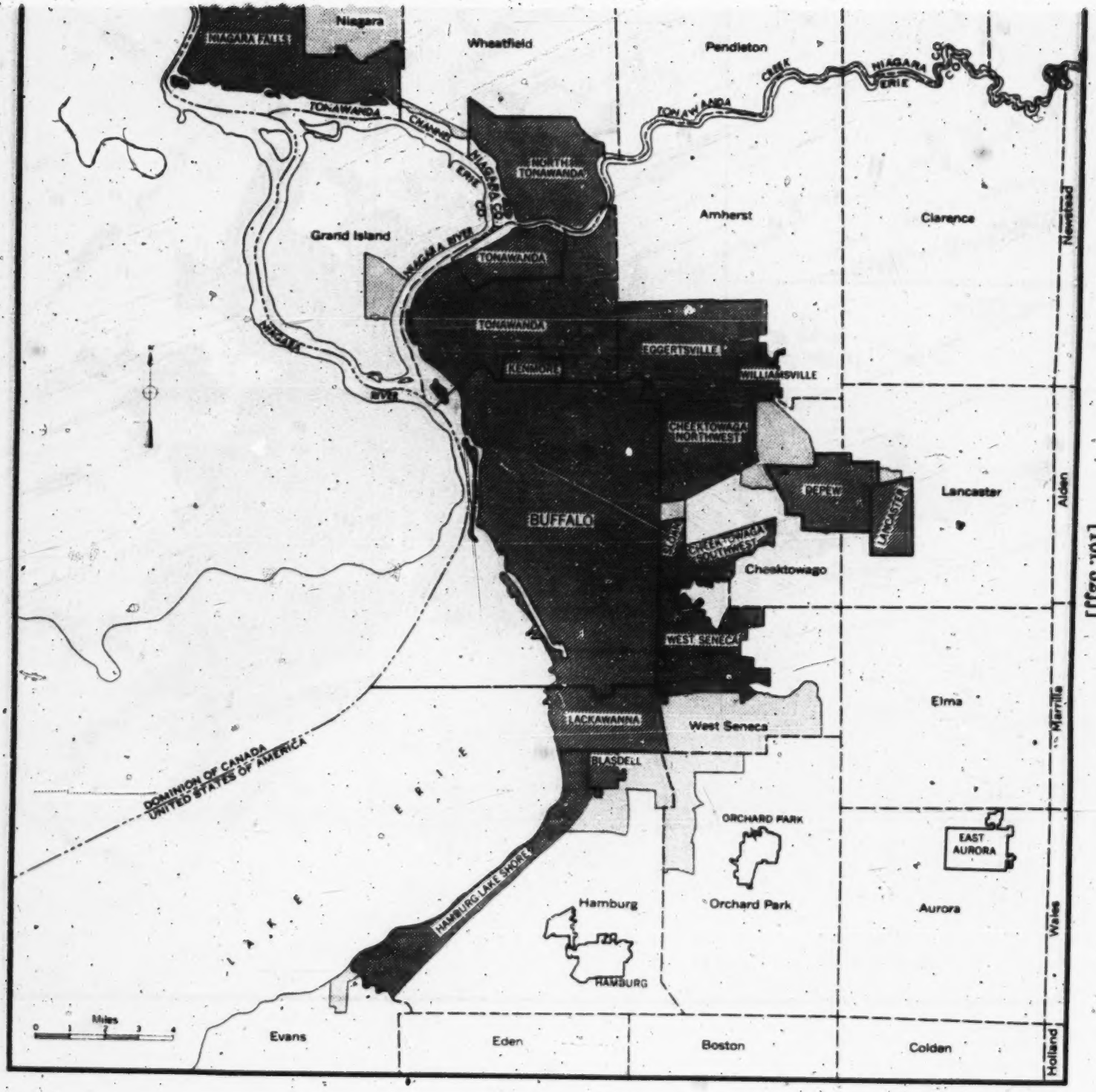
32 EE

Table 10.—POPULATION OF URBANIZED AREAS: 1960 AND 1950—Con.

Area	1960	1950
NEW YORK-NORTHEASTERN NEW JERSEY (N.Y.-N.J.) URBANIZED AREA—Con.		
In New Jersey—Con.		
Bergen County (part)—Con.		
River Edge borough	13,364	9,204
River Vale township	5,616	(1)
Rochelle Park township	6,119	4,483
Rockleigh borough	430	(1)
Rutherford borough	20,473	17,411
Saddle Brook township	13,834	7,955
Saddle River borough	1,776	(1)
South Hackensack township	1,841	1,303
Teaneck township	42,085	33,772
Tenafly borough	14,264	9,651
Teterboro borough	22	28
Upper Saddle River borough	3,970	(1)
Waldwick borough	10,495	3,963
Wallington borough	9,261	8,910
Washington township	6,654	(1)
Westwood borough	9,046	6,766
Woodcliff Lake borough	2,742	(1)
Wood-Ridge borough	7,964	6,283
Wyckoff township	11,209	2,319
Essex County (part)	920,659	899,232
Belleville town	35,005	32,019
Bloomfield town	51,867	49,307
Caldwell borough	6,942	6,270
Caldwell township (part)	424	(1)
Cedar Grove township	14,603	8,022
East Orange city	77,259	79,340
Essex Fells borough	2,174	1,617
Glen Ridge borough	8,322	7,620
Irvington town	59,379	59,201
Livingston township	23,124	7,867
Maplewood township	23,977	25,201
Millburn township	18,799	13,775
Montclair town	43,129	43,927
Newark city	405,220	438,776
North Caldwell borough	4,163	(1)
Nutley town	29,513	26,992
Orange city	35,789	38,037
Roseland borough	2,804	2,019
South Orange village	16,173	15,230
Verona borough	13,782	10,921
West Caldwell borough	8,314	4,666
West Orange town	39,895	28,605
Hudson County	610,734	647,431
Bayonne city	74,215	77,203
East Newark borough	1,872	2,173
Guttenberg town	5,118	5,566
Harrison town	11,743	13,490
Hoboken city	48,441	50,676
Jersey City	276,101	299,017
Kearny town	37,472	39,982
North Bergen township	42,387	41,554
Secaucus town	12,154	9,750
Union City	52,180	55,537
Weehawken township	13,904	14,830
West New York town	35,147	37,683
Middlesex County (part)	394,155	230,739
Carteret borough	20,502	13,030
Dunellen borough	6,840	6,291
East Brunswick township (part)	16,046	2,327
Edison township	44,799	10,824
Helmetta borough	779	580
Highland Park borough	11,049	9,721
Jamesburg borough	2,853	2,307
Madison township (part)	10,307	3,746
Metuchen borough	14,041	9,879
Middlesex borough	10,520	5,943
Milltown borough	5,435	3,786
Monroe township (part)	814	250
New Brunswick city	40,139	38,811
North Brunswick township (part)	7,514	3,684
Perth Amboy city	38,007	41,330
Piscataway township (part)	17,425	5,602
Sayreville borough	28,533	10,338
South Amboy city	8,422	8,422
South Plainfield borough	17,879	8,008
South River borough	13,397	11,308
Spotswood borough	5,788	2,325
Woodbridge township	78,846	32,227
Morris County (part)	189,851	93,732
Boonton town	7,981	7,163
Butler borough	3,414	4,030
Chatham borough	9,517	7,391
Chatham township (part)	4,943	392
Denville township (part)	7,660	2,783
Dover town	22,996	14,694
East Hanover township (part)	8,000	1,000
Florham Park borough	8,000	1,000
Hanover township (part)	15,000	5,000
Madison borough	15,000	10,000
Mendham township (part)	1,000	500
Mine Hill township (part)	3,209	765
Montville township (part)	937	(1)
Morris township (part)	8,260	3,832
Morris Plains borough	4,703	2,707
Morristown town	17,712	17,126
Mountain Lakes borough	4,037	2,806
Parsippany-Troy Hills township	25,597	2,900
Pequannock township	10,533	4,199
Randolph township (part)	2,141	1,241
Riverdale borough	2,596	1,352
Rockaway borough	5,413	3,812
Rockaway township (part)	5,213	380
Roxbury township (part)	5,256	(1)
Victory Gardens borough	1,085	(4)
Wharton borough	5,006	3,853
Passaic County (part)	398,461	322,283
Bloomingdale borough	5,293	3,251
Clifton city	82,084	44,511
Haledon borough	6,161	6,204
Hawthorne borough	17,735	14,816
Little Falls township	9,730	5,513
North Haledon borough	6,026	3,550
Passaic city	53,963	57,702
Paterson city	143,663	139,336
Pompton Lakes borough	9,449	4,634
Prospect Park borough	5,201	5,242
Ringwood borough	4,182	(1)
Totowa borough	10,897	6,045
Wanaque borough	7,126	4,222
Wayne township	29,353	1,306
West Paterson borough	7,602	3,931
Somerset County (part)	83,577	57,147
Bound Brook borough	10,263	8,374
Bridgewater township (part)	6,511	2,963
Franklin township (part)	10,430	3,422
Green Brook township (part)	2,852	(1)
Manville borough	10,995	8,597
North Plainfield borough	16,993	12,786
Raritan borough	6,177	3,131
Somerville borough	12,458	11,571
South Bound Brook borough	3,626	2,905
Watchung borough	3,312	1,818
Union County	504,295	393,322
Berkeley Heights township	8,721	622
Clark township	12,195	3,640
Cranford township	26,426	18,602
Elizabeth city	107,698	112,817
Fanwood borough	7,963	3,228
Garwood borough	5,426	4,622
Hillside township	22,304	21,007
Kenilworth borough	8,379	4,922
Linden city	39,931	30,644
Mountainside borough	6,325	2,046
New Providence borough	10,243	3,380
Plainfield city	45,330	42,366
Rahway city	27,699	21,290
Roselle borough	21,032	17,681
Roselle Park borough	12,346	11,337
Scotch Plains township	18,491	8,104
Springfield township	14,467	7,017
Summit city	23,677	17,929
Union township	51,499	37,906
Westfield town	31,447	21,243
Winfield township	2,438	2,719
ROCHESTER (N.Y.) URBANIZED AREA		
The area	493,402	409,149
Rochester city	318,611	332,488
Outside central city	174,791	76,661
The area includes the following minor civil divisions and parts of minor civil divisions:		
Monroe County (part)	493,402	409,149
Brighton town (part)	26,235	14,028
Chili town (part)	4,664	90
Gates town (part)	10,634	2,872
Greece town (part)	41,421	18,893
Irondequoit town	55,337	29,692
Penfield town (part)	5,862	(2)
Perinton town (part)	12,109	3,183
East Rochester village (part)	3,214	2,864
Fairport village	5,507	(2)

[fol. 32ff]

[fol. 32jj]



3266

Table 10.—POPULATION OF URBANIZED AREAS: 1960 AND 1950—Con.

Area	1960	1950
SYRACUSE (N.Y.) URBANIZED AREA		
The area	333,286	265,284
Syracuse city	216,038	220,583
Outside central city	117,248	44,703
The area includes the following minor civil divisions and parts of minor civil divisions:		
Onondaga County (part)	333,286	265,284
Camillus town (part)	14,268	1,480
Camillus village	1,416	(1)
Cicero town (part)	5,893	1,252
North Syracuse village (part)	2,361	1,233
Clay town (part)	11,041	2,123
North Syracuse village (part)	9,151	2,123
De Witt town (part)	16,929	9,651
East Syracuse village	4,708	4,766
Geddes town (part)	19,119	11,167
Solvay village	8,732	7,868
Lysander town (part)	538	(1)
Manlius town (part)	12,693	1,008
Fayetteville village	4,311	(1)
Manlius village	1,997	(1)
Minoa village	1,838	1,008
Onondaga town (part)	4,942	1,973
Salina town (part)	31,924	16,049
Liverpool village	3,487	2,933
Syracuse city	216,038	220,583
UTICA-ROME (N.Y.) URBANIZED AREA		
The area	187,779	117,424
In central cities	152,096	101,531
Rome	51,646	(1)
Utica	100,410	101,531
Outside central cities	35,723	15,893
The area includes the following minor civil divisions and parts of minor civil divisions:		
Herkimer County (part)	466	477
Schuyler town (part)	466	(1)
Oneida County (part)	187,313	117,327
Deerfield town (part)	2,218	(1)
Lee town (part)	1,678	(1)
Marcy town (part)	395	(1)
New Hartford town (part)	13,834	3,003
New Hartford village	2,468	1,947
New York Mills village (part)	1,805	1,380
Rome city	51,646	(1)
Utica city	100,410	101,531
Western town (part)	142	(1)
Whitestown town (part)	17,030	10,793
New York Mills village (part)	2,183	1,986
Oriskany village	1,580	1,346
Whitesboro village	4,784	3,902
Yorkville village	3,749	3,528

[1] Not in area in 1950.
[2] Includes population (97) of part of Frankfort town not included in area in 1960.

Table 11.—POPULATION OF STANDARD METROPOLITAN STATISTICAL AREAS: 1960 AND 1950

[Data relate to areas as defined for 1960. Minus sign (-) denotes decrease]

Standard metropolitan statistical area, central city, and other component areas	1960	1950	Increase	
			Number	Percent
ALBANY-SCHENECTADY-TROY, N.Y.				
Total	657,503	589,359	68,144	11.6
In central cities	278,900	299,091	-20,191	-6.8
Albany	29,726	134,995	-5,269	-3.9
Schenectady	81,682	91,785	-10,103	-11.0
Troy	67,492	72,311	-4,819	-6.7
Outside central cities	378,603	290,268	88,335	30.4
Albany County	272,926	239,386	33,540	14.0
Rensselaer County	142,585	132,607	9,978	7.5
Saratoga County	89,096	74,869	14,227	19.0
Schenectady County	152,896	142,497	10,399	7.3
BINGHAMTON, N.Y. (Broome County)				
Total	212,661	184,698	27,963	15.1
Binghamton city	75,941	80,674	-4,733	-5.9
Outside central city	136,720	104,024	32,696	31.4
BUFFALO, N.Y.				
Total	1,306,957	1,089,230	217,727	20.0
Buffalo city	532,759	580,132	-47,373	-8.2
Outside central city	774,198	509,098	265,100	52.1
Erie County	1,064,688	899,238	165,450	18.4
Niagara County	242,269	189,992	52,277	27.5
NEW YORK, N.Y.				
Total	10,694,633	9,555,943	1,138,690	11.9
New York City	7,781,984	7,891,957	-109,973	-1.4
Outside central city	2,912,649	1,663,986	1,248,663	75.0
New York City	7,781,984	7,891,957	-109,973	-1.4
Bronx County	1,424,815	1,451,277	-26,462	-1.8
Kings County	2,627,319	2,738,175	-110,856	-4.0
New York County	1,698,281	1,960,101	-261,820	-13.4
Queens County	1,809,578	1,550,849	258,729	16.7
Richmond County	221,991	191,555	30,436	15.9
ROCHESTER, N.Y. (Monroe County)				
Total	586,387	487,632	98,755	20.3
Rochester city	318,611	332,488	-13,877	-4.2
Outside central city	267,776	155,144	112,632	72.6
SYRACUSE, N.Y.				
Total	563,781	465,114	98,667	21.2
Syracuse city	216,038	220,583	-4,545	-2.1
Outside central city	347,743	244,531	103,212	42.2
Madison County	54,635	46,214	8,421	18.2
Onondaga County	423,028	341,719	81,309	23.8
Cayuga County	86,118	77,181	8,937	11.6
UTICA-ROME, N.Y.				
Total	330,771	284,262	46,509	16.4
In central cities	152,056	143,213	8,843	6.2
Utica	100,410	101,531	-1,121	-1.1
Rome	51,646	41,682	9,964	23.9
Outside central cities	178,715	141,049	37,666	26.7
Herkimer County	66,370	61,407	4,963	8.1
Oneida County	264,401	222,855	41,546	18.6

[Vol. 3222]

Table 11a.—POPULATION OF THE NEW YORK–NORTHEASTERN NEW JERSEY STANDARD CONSOLIDATED AREA: 1960 AND 1950

[Minus sign (—) denotes decrease]

Component area	1960	1950	Increase	
			Number	Percent
The area	14,759,429	12,911,994	1,847,435	14.3
New York, N.Y., SMSA	10,694,633	9,555,943	1,138,690	11.9
Newark, N.J., SMSA	1,689,420	1,468,458	220,962	15.0
Jersey City, N.J., SMSA	610,734	647,437	-36,703	-5.7
Paterson-Clifton-Passaic, N.J., SMSA	1,186,873	876,232	310,641	35.5
Middlesex County, N.J.	433,856	264,872	168,984	63.8
Somerset County, N.J.	143,913	99,052	44,861	45.3

Table 12.—POPULATION OF THE STATE AND OF STANDARD METROPOLITAN STATISTICAL AREAS, BY TYPE OF RESIDENCE: 1960

Metropolitan-nonmetropolitan residence	Total	Urban			Rural		
		Total	Central city or cities	Other urban territory	Total	Places of 1,000 to 2,500	Other rural territory
The State	16,782,304	14,331,925	9,396,289	4,975,636	2,450,379	309,250	2,141,129
In standard metropolitan statistical areas	14,352,693	13,322,679	9,396,289	3,966,390	1,030,014	111,444	918,570
Albany-Schenectady-Troy	697,303	495,264	278,900	216,364	162,259	14,195	148,064
Binghamton	212,661	158,141	75,941	82,200	54,520	3,262	51,258
Buffalo	1,306,997	1,111,743	532,759	578,984	195,214	20,820	174,394
New York	10,694,633	10,412,934	7,781,984	2,630,950	281,699	43,119	238,580
Rochester	586,387	508,121	318,411	189,710	78,266	8,804	69,462
Syracuse	563,781	404,293	216,038	188,255	159,488	11,154	148,334
Utica-Rome	330,771	232,203	152,056	80,147	98,568	10,090	88,478
Not in standard metropolitan statistical areas	2,429,611	1,009,246	...	1,009,246	1,420,365	197,806	1,222,559

[fol. 32hh]

Number of Inhabitants

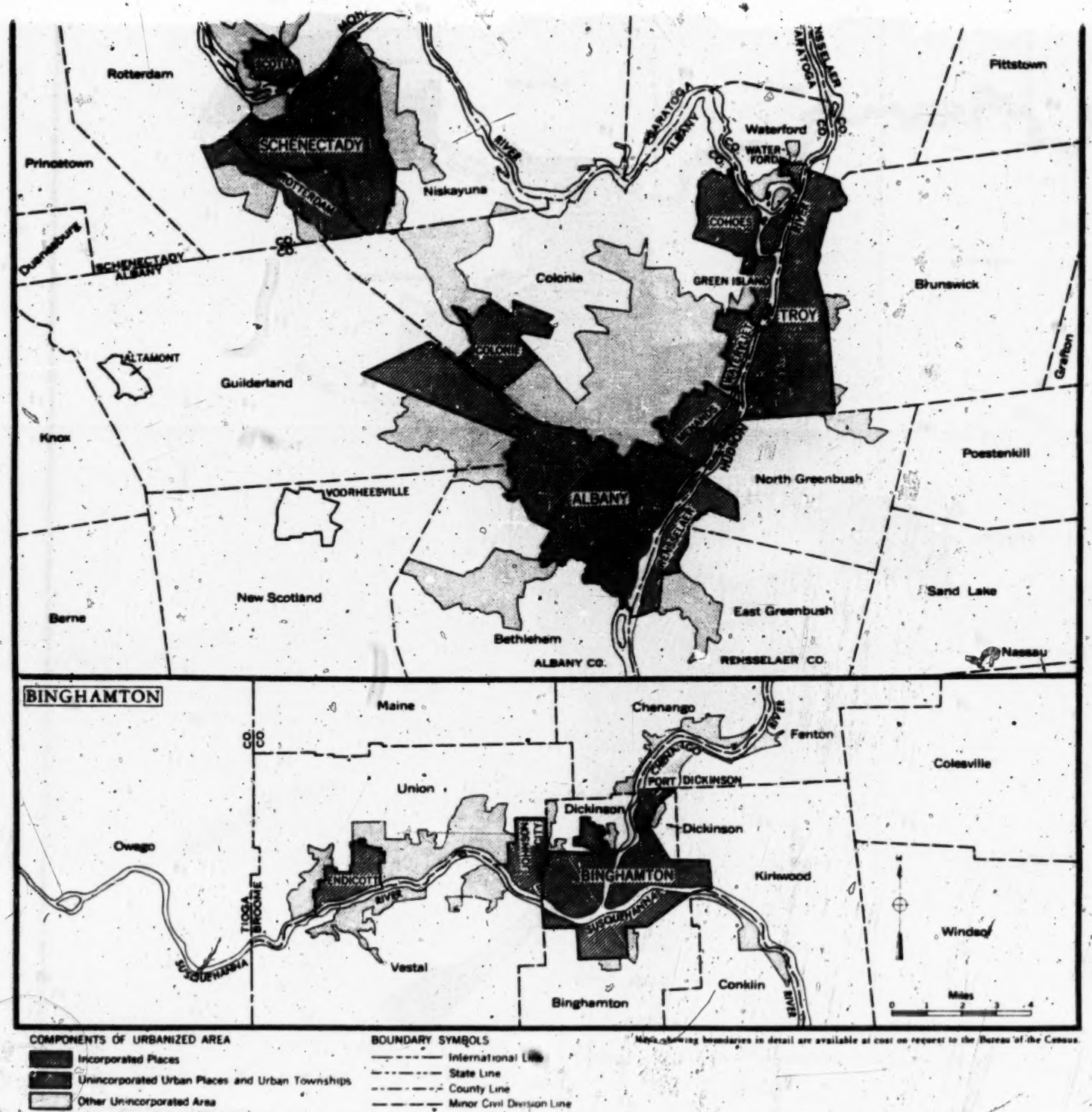
URBANIZED AREAS—NEW YORK

[fol. 32ii]

[fol. 32 ii]

80

32 ii 2

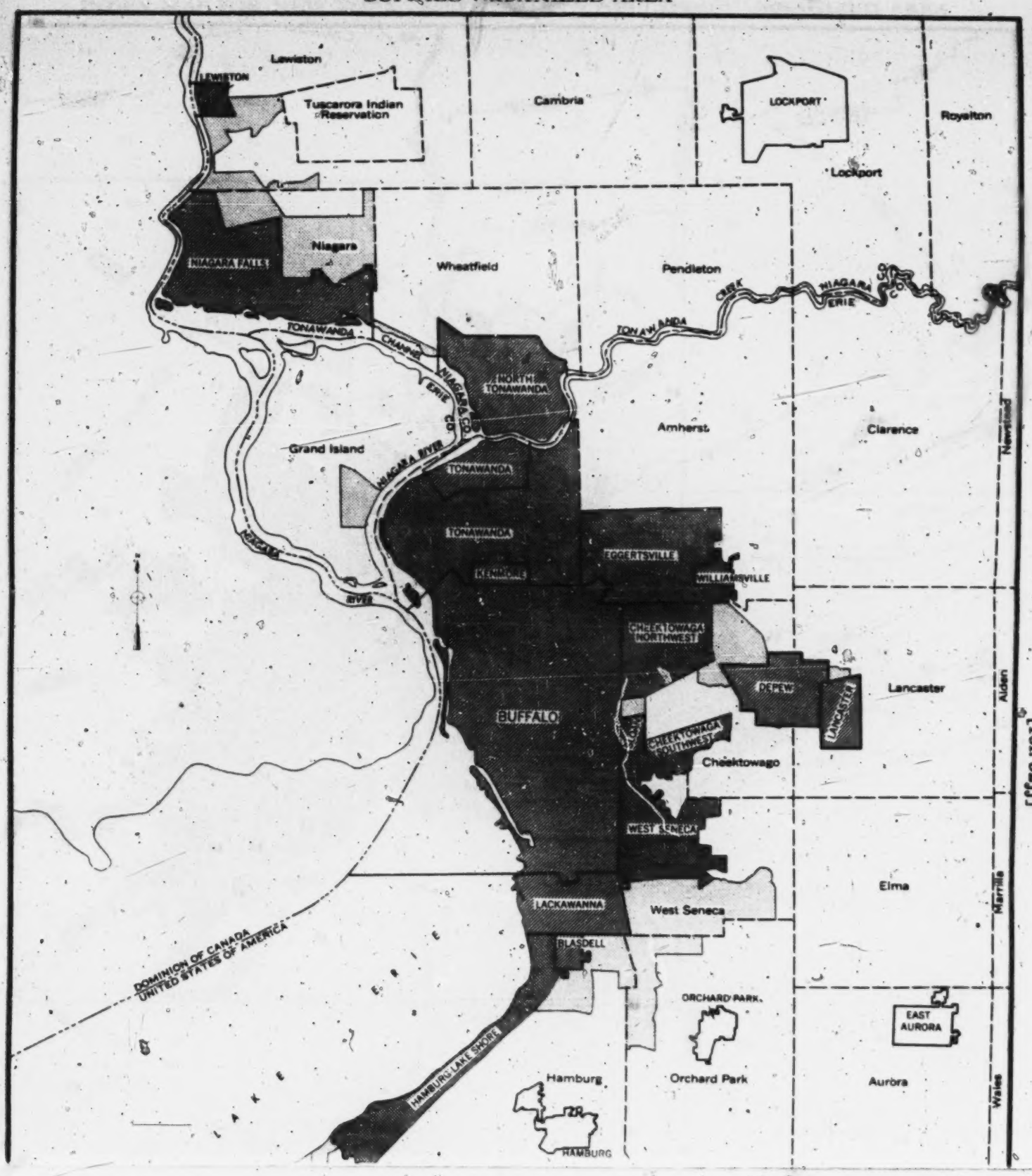


[fol. 32ii]

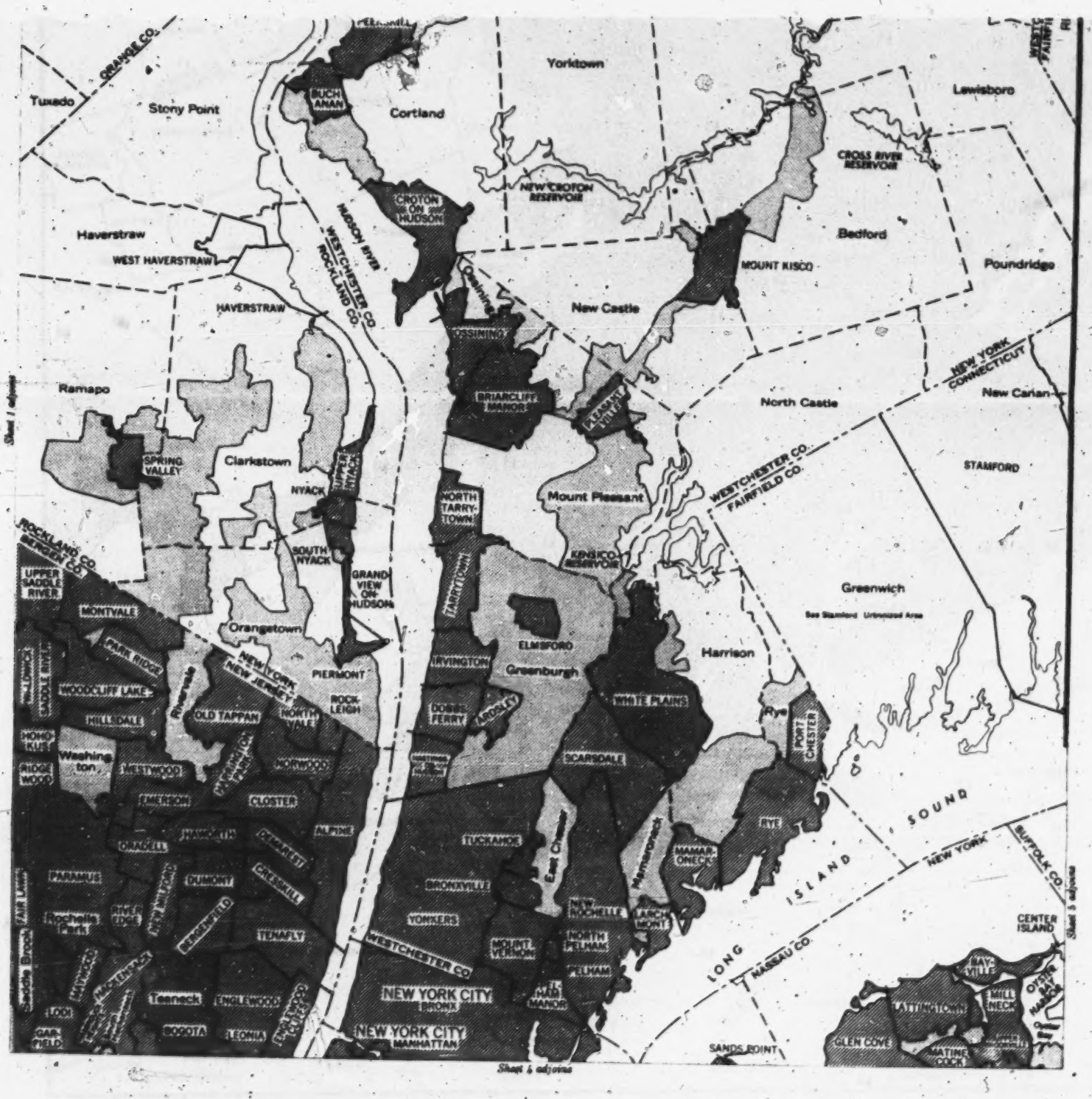
77

3271

BUFFALO URBANIZED AREA



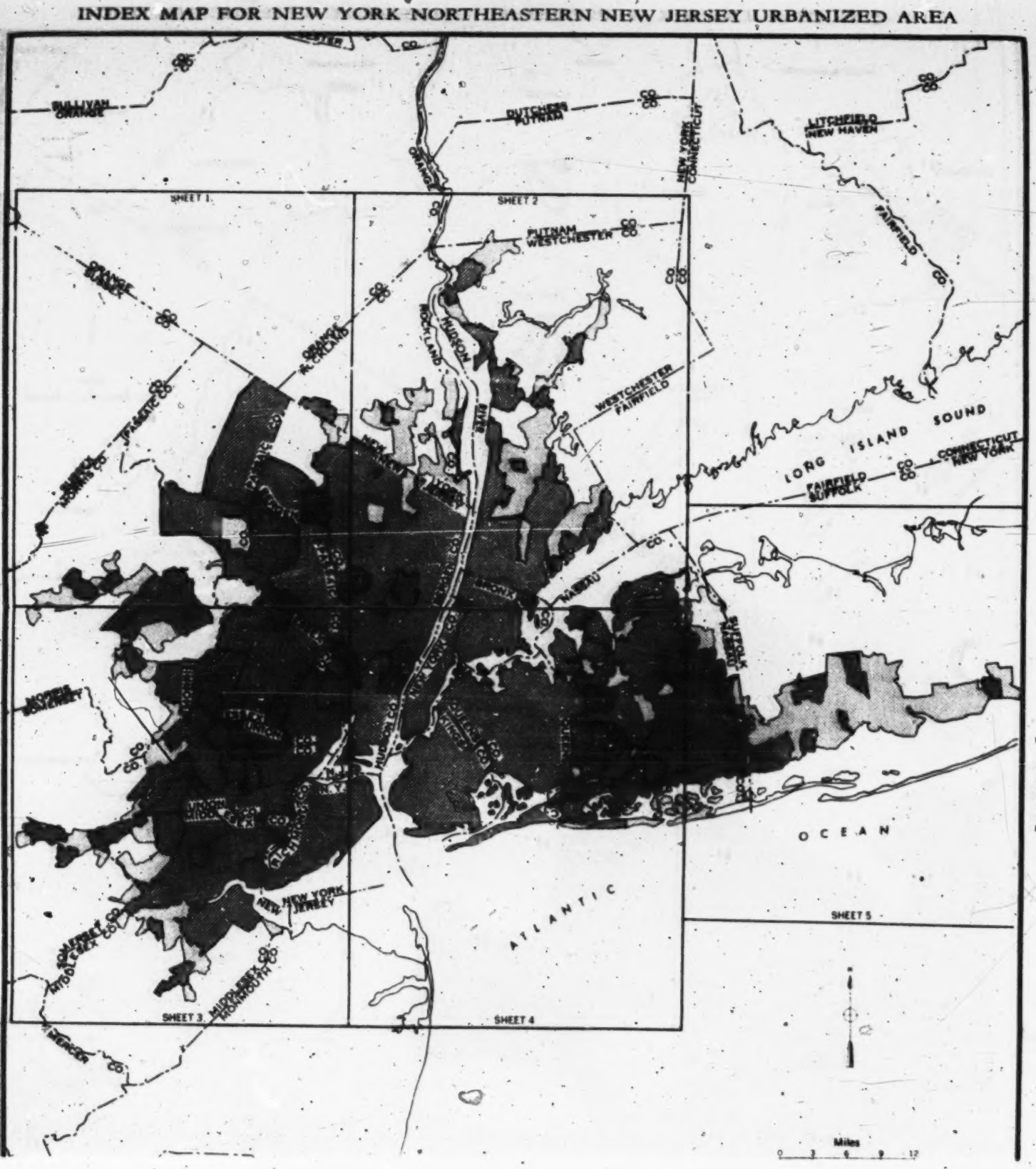
[fol. 32jj]

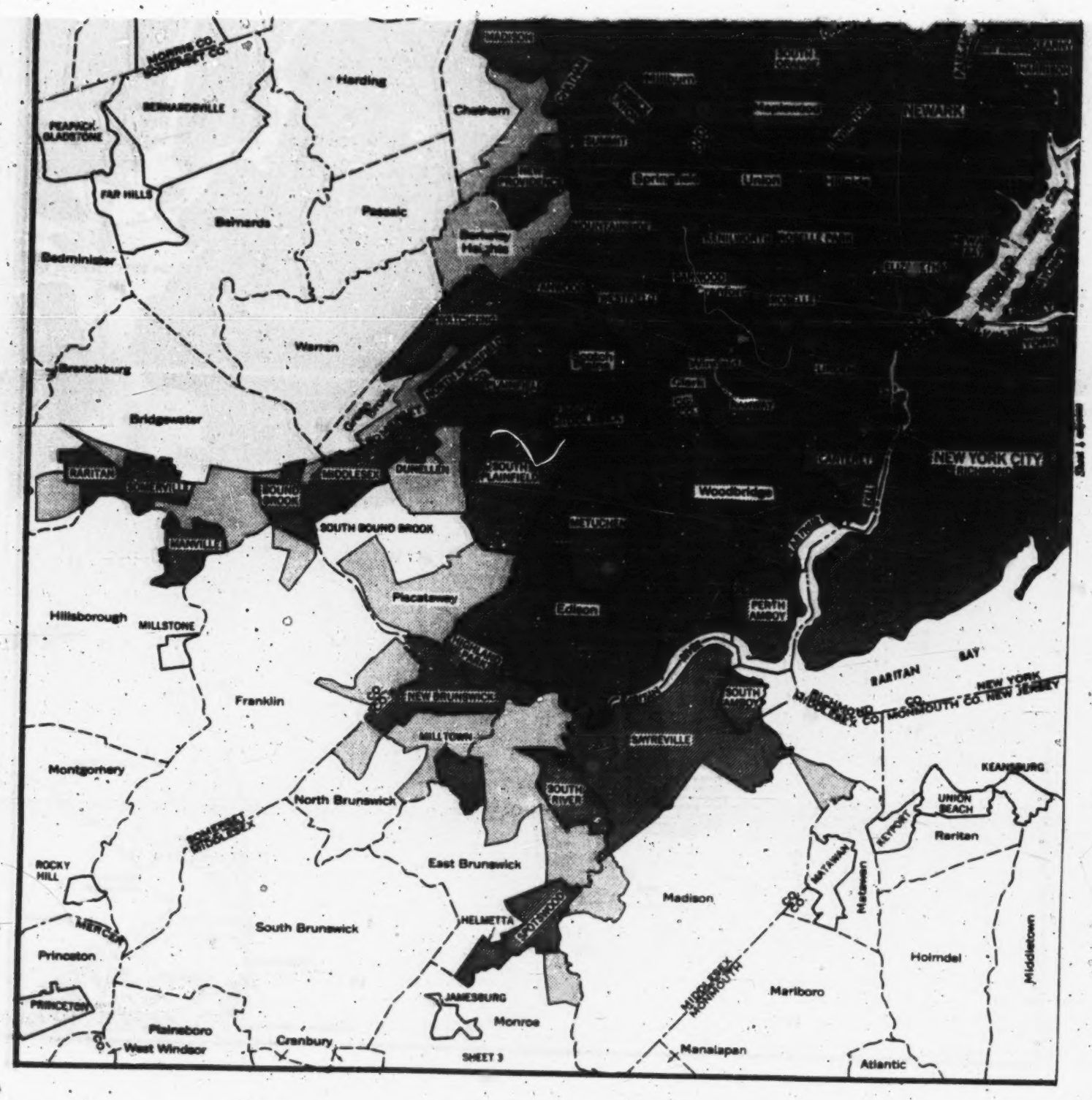


[fol. 32mm]

32mm

INDEX MAP FOR NEW YORK-NORTHEASTERN NEW JERSEY URBANIZED AREA





[fol. 32kk]

[fol. 32ll]

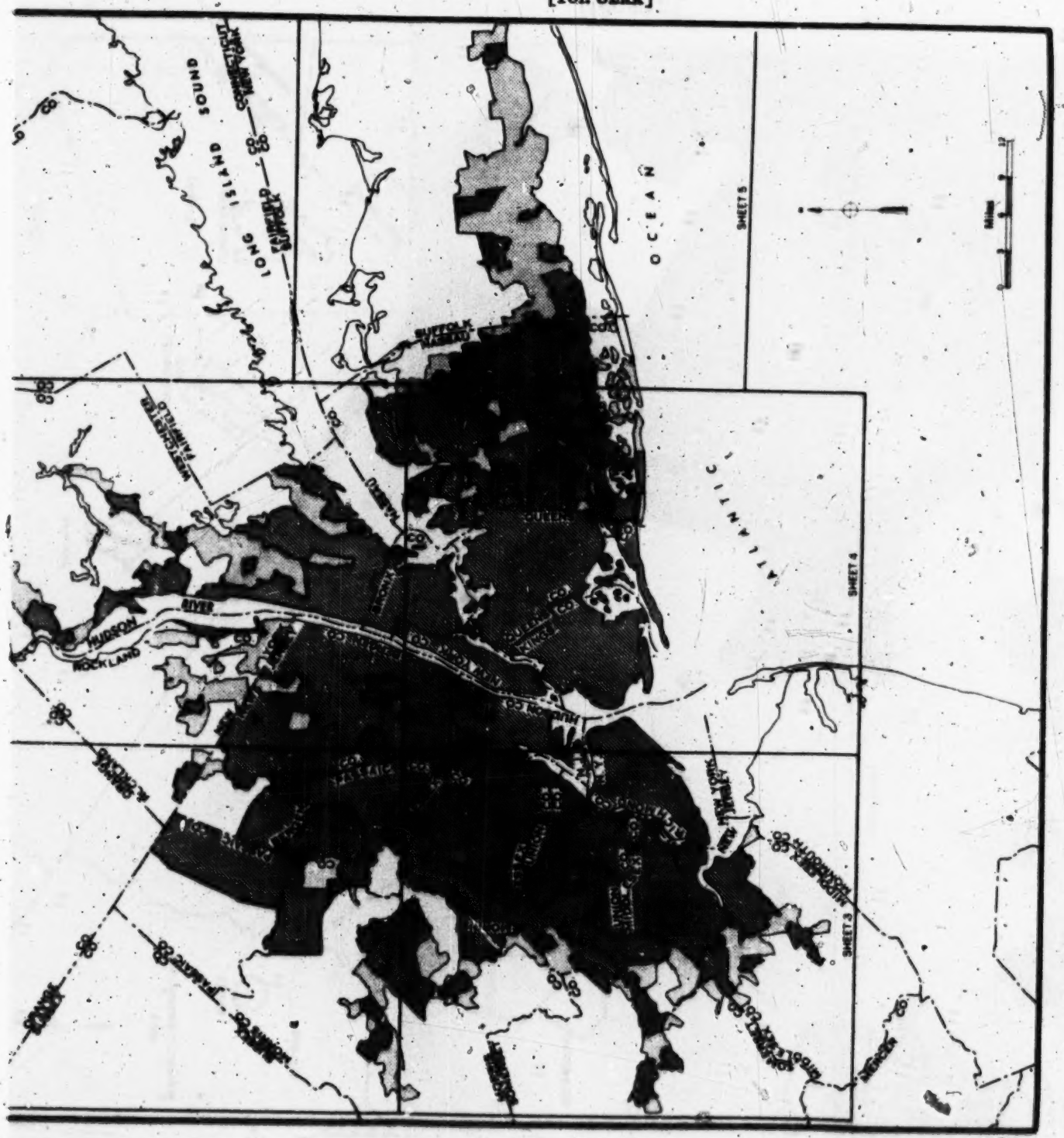
[fol. 32mm]

[fol. 32nn]

82

32nn

[fol. 32kk]



32 KK

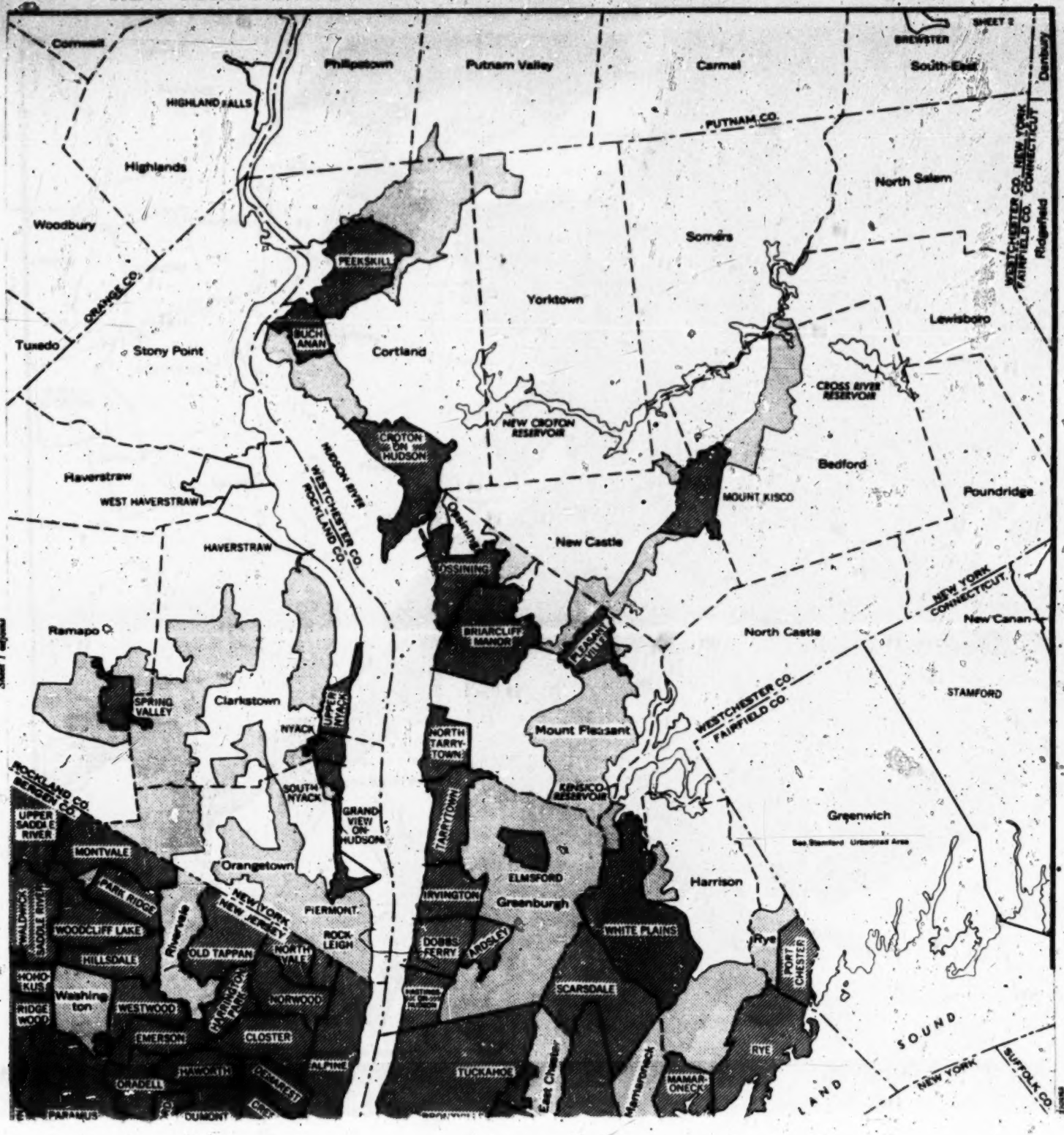
NEW YORK-NORTHEASTERN NEW JERSEY URBANIZED AREA—SECTION 1

[fol. 32 II]

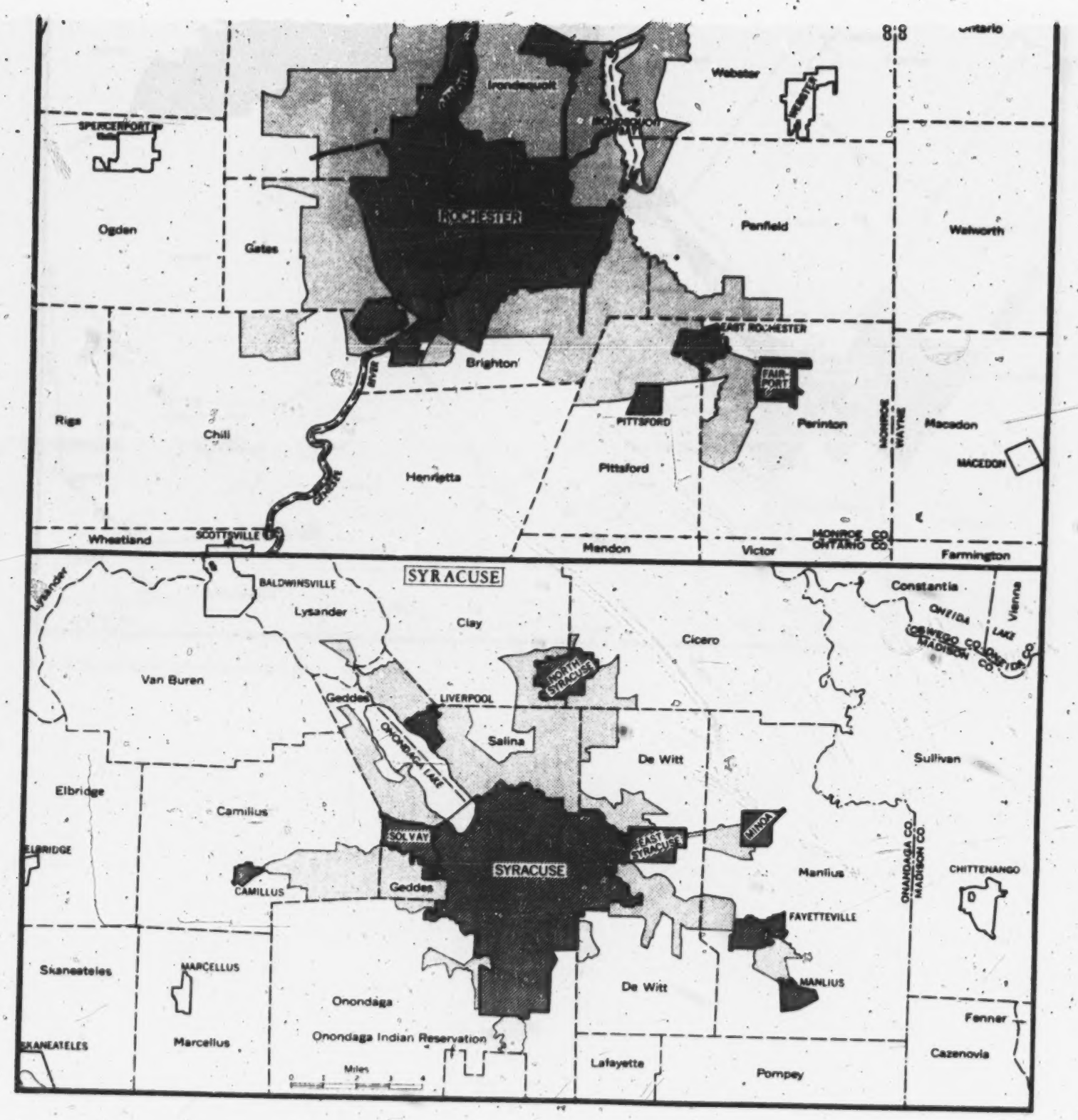
[fol. 3200]

3200

NEW YORK NORTHEASTERN NEW JERSEY URBANIZED AREA—SECTION 2

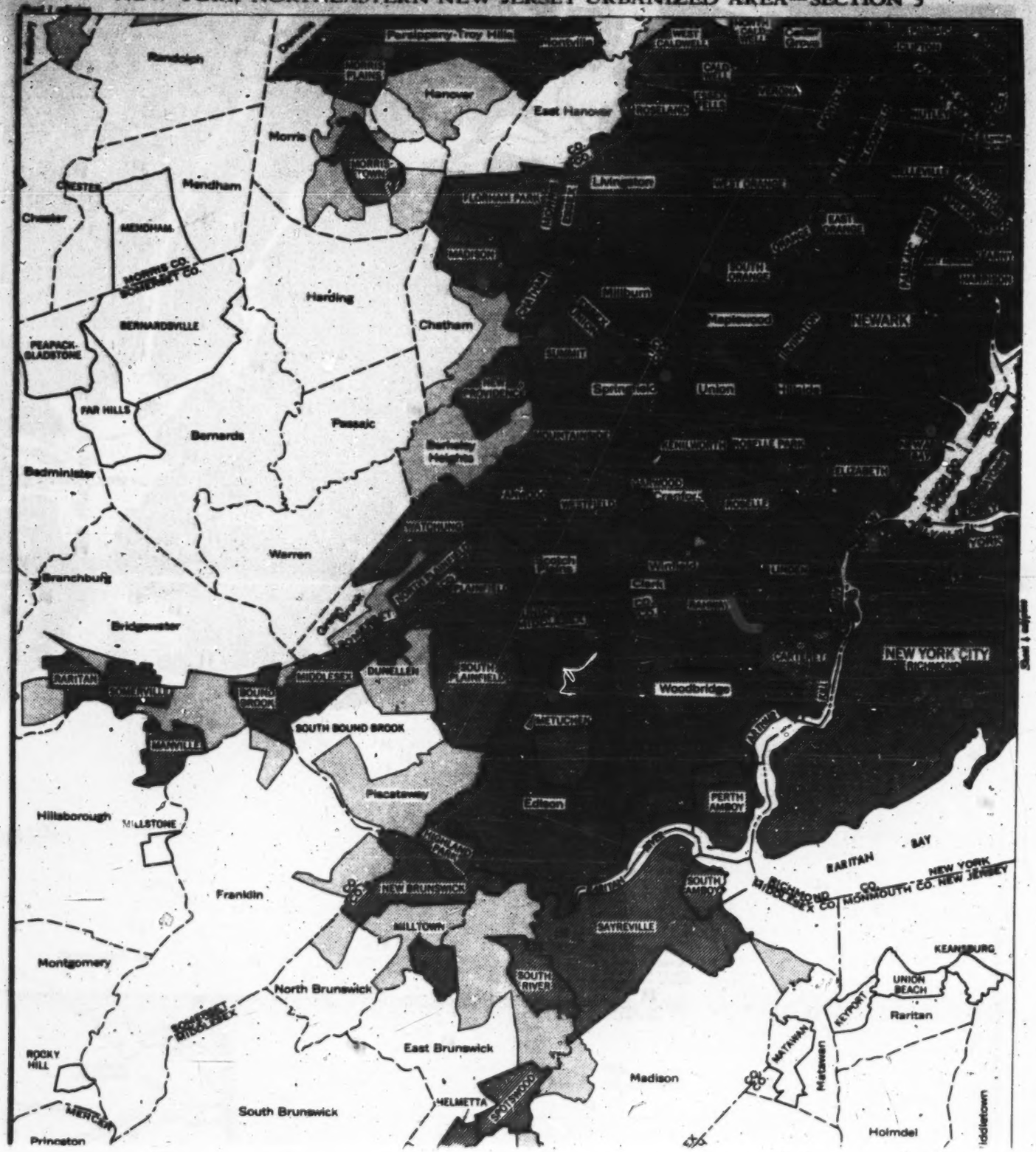


[fol. 32mm]


Ontario
Webster
Irondequoit
SPERCERPORT
ROCHESTER
Ogden
Gates
Penfield
Walworth
EAST ROCHESTER
Brighton
FAIRPORT
Riga
Chili
PITTSFORD
Perinton
MONROE
WAYNE
Macedon
MACEDON
Henrietta
Pittsford
Wheatland
SCOTTSVILLE
Mendon
Victor
MONROE CO.
ONTARIO CO.
Farmington
SYRACUSE
BALDWINSVILLE
Lysander
Clay
Constantia
Vienna
ONEIDA LAKE
OSWEGO CO.
MADISON CO.
Cicero
Van Buren
NORTH SYRACUSE
Geddes
LIVERPOOL
ONONDAGA LAKE
Salina
De Witt
Sullivan
Elbridge
Camillus
SOLVAY
EAST SYRACUSE
MINOA
SYRACUSE
Manlius
ONANDAGA CO.
MADISON CO.
CHITTENANGO
CAMILLUS
Geddes
FAYETTEVILLE
Skaneateles
MARCELLUS
De Witt
MANLIUS
Onondaga
Fenner
Onondaga Indian Reservation
Marcellus
SKANEATELES
Lafayette
Pompey
Cazenovia
Miles
0 1 2 3 4

32 Q5

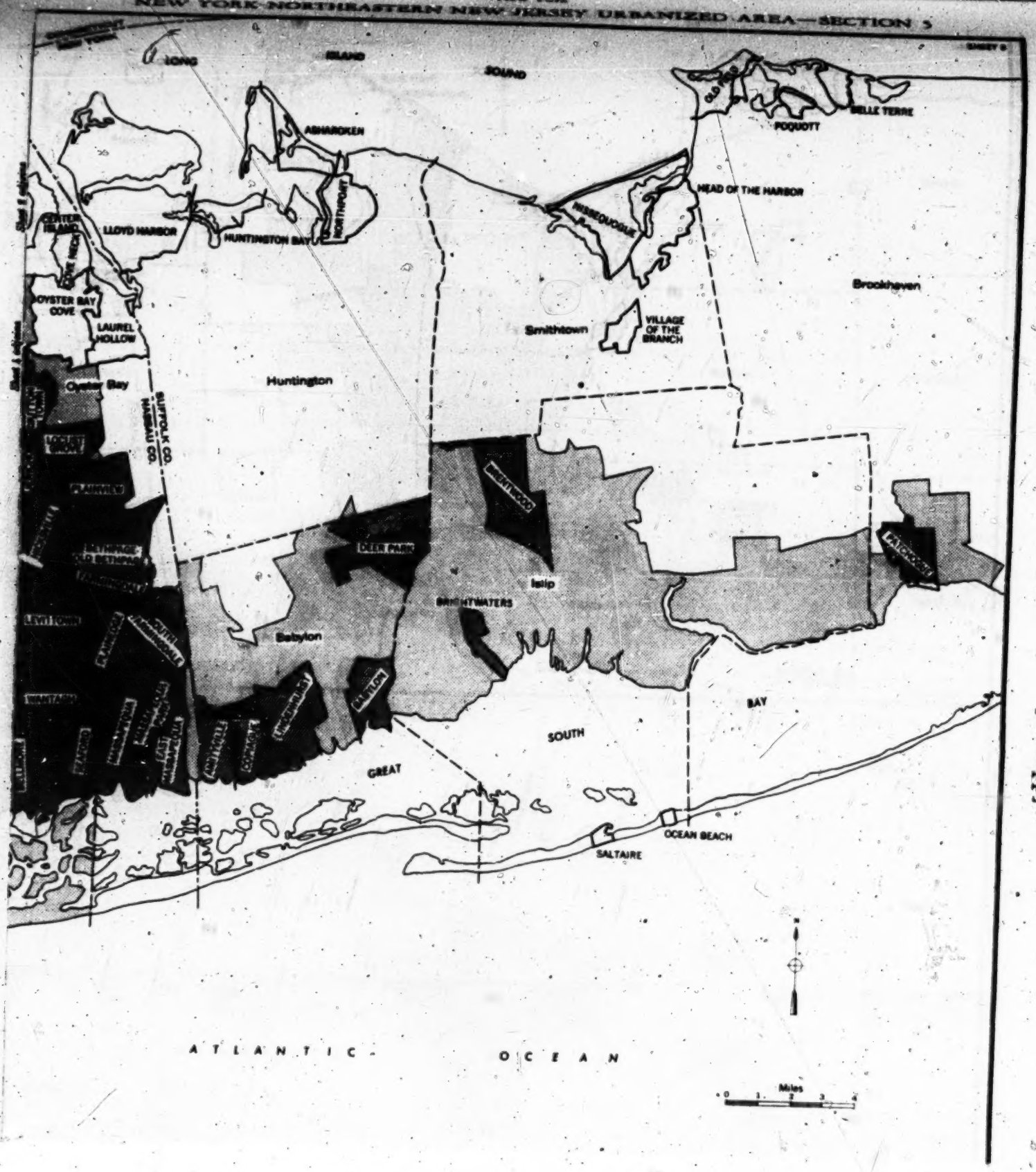
NEW YORK-NORTHEASTERN NEW JERSEY URBANIZED AREA—SECTION 3



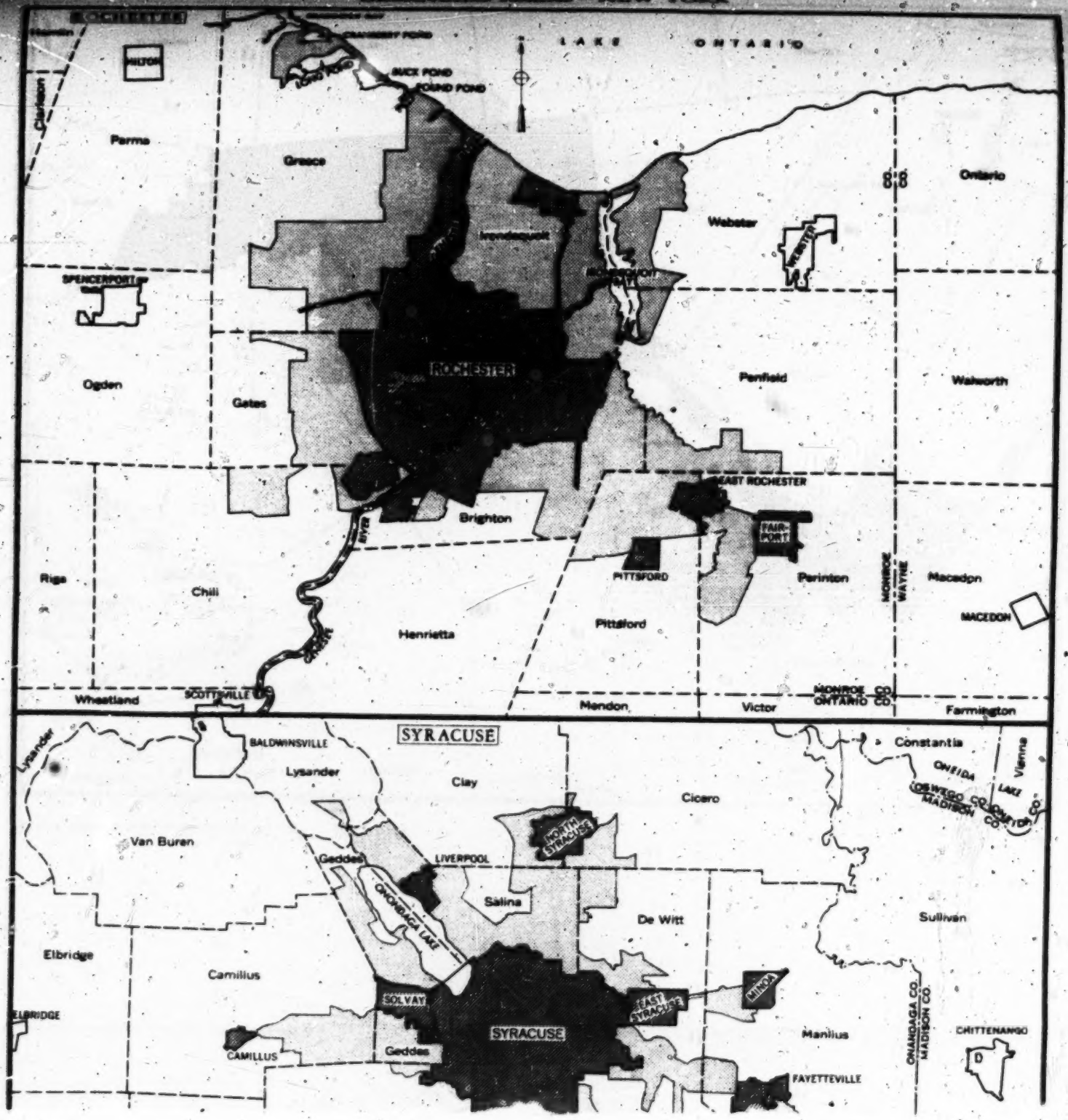
[fol. 32nn]

NEW YORK-NORTHEASTERN NEW JERSEY URBANIZED AREA—SECTION 4

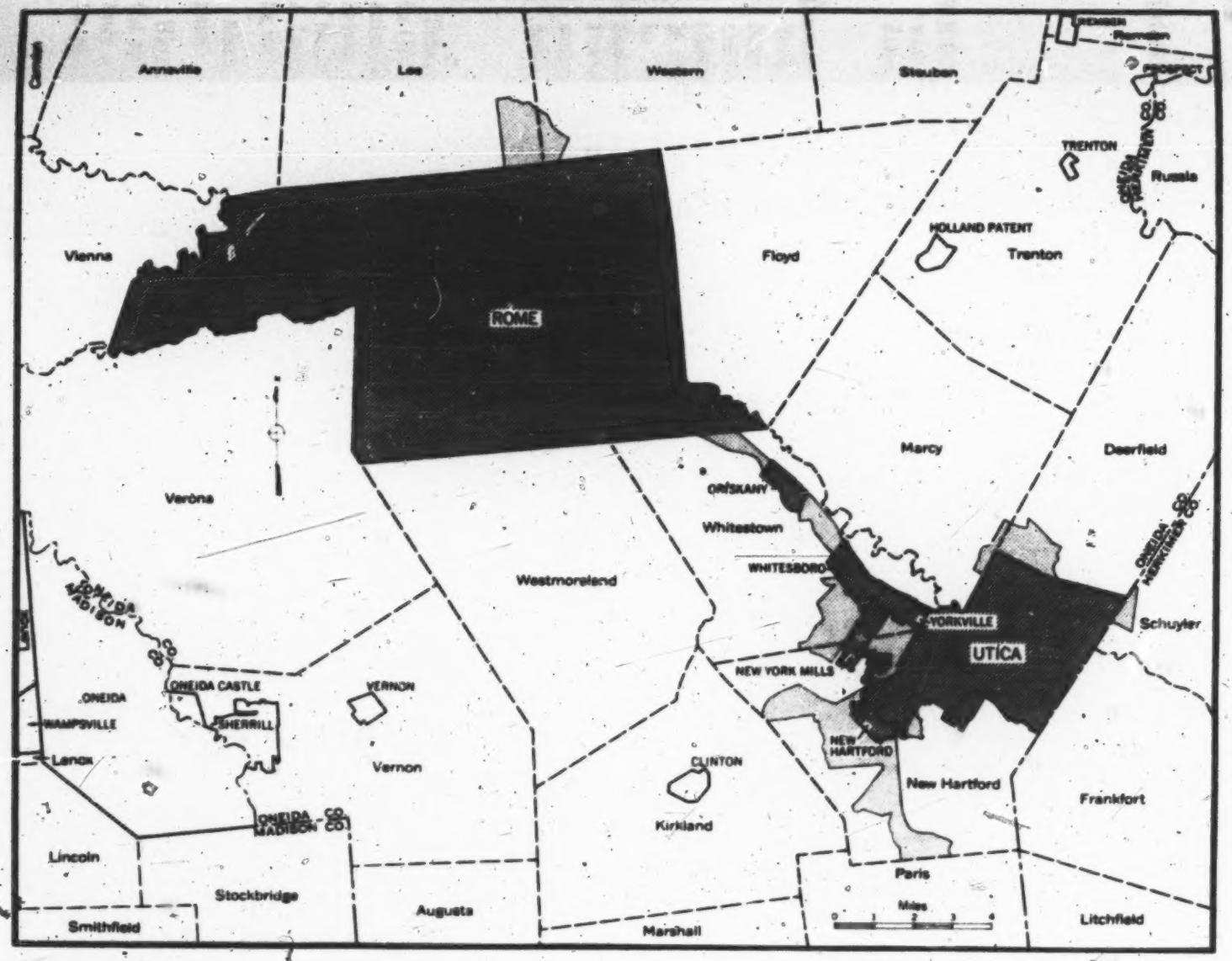
[fol. 3200]


NEW YORK-NORTHEASTERN NEW JERSEY URBANIZED AREA—SECTION 5
LONG ISLAND SOUND
ASHAROKEN
OLD FIELD
POQUOTT
BELLE TERRE
HEAD OF THE HARBOR
NISSEQUOGUE
NORTHPORT
HUNTINGTON BAY
LLOYD HARBOR
CENTER ISLAND
COVE NECK
OYSTER BAY COVE
LAUREL HOLLOW
Brookhaven
Smithtown
VILLAGE OF THE BRANCH
Huntington
Oyster Bay
SUFFOLK CO NASSAU CO.
DEER PARK
Islip
BRIGHTWATERS
Babylon
BAY
SOUTH
GREAT
OCEAN BEACH
SALTAIRE
ATLANTIC OCEAN
Miles
0 1 2 3 4

[fol. 32pp]


ROCHESTER
LAKE ONTARIO
Parma
Greece
Ontario
Webster
Irondequoit
Ogden
Gates
Penfield
Walworth
Brighton
EAST ROCHESTER
PITTSFORD
Perinton
Macedon
Rigs
Chili
Henrietta
Pittsford
MACEDON
Wheatland
Mendon
Victor
Farmington
SYRACUSE
BALDWINSVILLE
Lysander
Clay
Cicero
Constantia
Van Buren
Geddes
LIVERPOOL
Salina
De Witt
Sullivan
Elbridge
Camillus
SOLVAY
EAST SYRACUSE
MINOA
Manlius
CAMILLUS
FAYETTEVILLE
CHITTENANGO
ONONDAGA CO.
MADISON CO.
ONEIDA CO.
OSWEGO CO.
MONROE CO.
ONTARIO CO.
WAYNE CO.

[fol. 32qq]



☆ U. S. GOVERNMENT PRINTING OFFICE: 1981 — 365788/55

[fol. 32rr]

[fol. 41] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
No. 61 Civ. 1559

W.M.C.A., INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

against

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, ABE STARK, President of the City Council of the City of New York, A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County, OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, City of New York, Defendants.

ANSWER—Filed January 11, 1962

Defendant Abe Stark, President of the City Council of the City of New York, sued herein as representative of the entire City Council, and defendants Denis J. Mahon, James Powers, John R. Crews and Thomas Mallee, Commissioners of the Board of Elections of the City of New York, by Leo A. Larkin, Corporation Counsel of the City of New York, for their answer to the complaint herein:

Admit each and every allegation contained in the complaint.

Wherefore defendants in whose behalf this answer is [fol. 42] interposed do respectfully consent and affirmatively request that the Court grant to the plaintiffs herein the relief prayed for in their complaint.

June 2, 1961.

Leo A. Larkin, Corporation Counsel, Attorney for Defendant Abe Stark, President of the City Council, etc. and Defendants Denis J. Mahon, James Powers, John R. Crews and Thomas Mallee, Commissioners of the Board of Elections of the City of New York, Office & P.O. Address, Municipal Building, Chambers and Centre Streets, Borough of Manhattan, New York City 7, New York.

[fol. 42a] Acknowledgments of service (omitted in printing).

[fol. 261] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC.; B. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. McCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, ABE STARK, President of the City Council of the City of New York; A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENNIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

Appearances:

Robinson, Silverman, Pearce & Aronsohn and Max Gross, Attorneys for Plaintiffs, 230 Park Avenue, New York, N.Y., Leonard B. Sand, Of Counsel.

Louis J. Lefkowitz, Attorney General of the State of New York, Attorney pro se and Attorney for Caroline K. Simon, Secretary of State of the State of New York, The Capitol, Albany, New York and 80 Centre Street, New York, N. Y., Irving Galt, Assistant Solicitor General, George C. Mantzoros, Gretchen W. Oberman, Assistant Attorneys General, Of Counsel.

[fol. 262]

Leo A. Larkin, Corporation Counsel of the City of New York, Attorney for Defendant Abe Stark, President of the City Council of the City of New York, and Defendants Denis J. Mahon, et al., Commissioners of the Board of Elections of the City of New York, Municipal Building, New York, N. Y., Benjamin Offner, Of Counsel.

George W. Percy, Jr., County Attorney for the County of Suffolk, New York, Attorney for Defendant William J. Leonard, Chairman, Board of Supervisors, Suffolk County, Suffolk County Center, Riverhead, New York, Stanley S. Corwin, Assistant County Attorney, Of Counsel.

J. Oakey McKnight, County Attorney for the County of Nassau, Attorney for Defendant A. Holly Patterson, Chairman, Board of Supervisors, Nassau County, Old County Courthouse, Mineola, New York, Harold E. Collins, Deputy County Attorney of the County of Nassau, Of Counsel.

Francis J. Morgan, County Attorney of Westchester County, Attorney for Defendant Owen M. Quinn, Chairman, Board of Supervisors, Westchester County, County Office Building, White Plains, New York, Irving Libenson, Assistant County Attorney, Of Counsel.

Ferdinand I. Haber, Attorney for Petitioner, Eugene H. Nickerson, Amicus Curiae, 1501 Franklin Avenue, Mineola, New York.

Before: Waterman, Circuit Judge, Ryan and Levet, District Judges.

OPINION—January 11, 1962

LEVET, D. J.

[fol. 263] This matter came before this court pursuant to Title 28 USCA § 2284 as a result of the determination by the district court by opinion dated July 7, 1961 and order made pursuant thereto. See WMCA Inc. v. Simon, D.C.S.D. N.Y., 1961, 196 F. Supp. 758.

Before this statutory three-judge court, motions have been renewed by defendants Caroline K. Simon, Secretary of State of the State of New York, Louis J. Lefkowitz, Attorney General of the State of New York, A. Holly Patterson, Chairman, Board of Supervisors, Nassau County, Owen M. Quinn, Chairman, Board of Supervisors, Westchester County, William J. Leonard, Chairman, Board of Supervisors, Suffolk County, to dismiss the complaint in this action under Rule 12(b) of the Federal Rules of Civil Procedure on the grounds that (1) the court lacks jurisdiction over the subject matter and (2) the complaint fails to state a claim upon which relief can be granted.

The New York City defendants, to wit, Abe Stark, President of the City Council of the City of New York, Denis J. Mahon, James Powers, John R. Crews, Thomas Mallee, Commissioners, Board of Elections, New York City, have answered the complaint, admitting the allegations thereof and in effect asking for the relief sought by the plaintiffs. Consequently, they have opposed the aforesaid motion.

[fol. 264] The Complaint

Plaintiffs in their various alleged capacities as taxpayers, citizens and voters seek (1) a declaratory judgment pursuant to 28 USCA §§ 2201 and 2202 that New York's constitutional and statutory provisions governing apportionment of State, Senate and Assembly Districts, (New York State Constitution, Art. III, §§ 2-5; New York State Law §§ 121, 123) are unconstitutional under the due process and equal protection clauses of the Fourteenth Amendment of the United States; and (2) an injunction to restrain the New York Attorney General and Secretary of State, as well as the above-mentioned county and municipal officials,

from performing their required functions under the challenged laws.

Jurisdiction was asserted under the Civil Rights Act, 42 USCA §§ 1983, 1988, and 28 USCA § 1343(3). Plaintiffs sought the convening of a three-judge court, pursuant to 28 USCA § 2281, insofar as an injunction is requested restraining enforcement or execution of a state statute and constitution.

Except for W.M.C.A. Inc., a New York corporation, characterized in the complaint as a "taxpayer" (par. 3 of complaint), plaintiffs are all individuals described as "citizens," "taxpayers," and "qualified voters" (par. 4 of complaint) from four of the five counties of New York City (none from Richmond County) and the Counties of Nassau and [fol. 265] Suffolk. One of the plaintiffs, R. Peter Straus, further alleges that he is president of the corporate plaintiff, W.M.C.A. Inc. (par. 4[a] of complaint).

Plaintiffs ask the court to declare Art. III, §§ 2-5 of the New York State Constitution violative of the due process and equal protection of the laws provision of the Fourteenth Amendment of the Constitution of the United States upon the ground that:

> "• • • the apportionment formula contained therein results, and must necessarily result, when applied to the population figures of the State in a grossly unfair weighting of both houses in the State legislature in favor of the lesser populated rural areas of the state to the great disadvantage of the densely populated urban centers of the state." (par. 12 of complaint)

The complaint specifically cites as the cause of this allegedly unconstitutional distribution of state legislative representation the New York Constitutional provisions requiring that:

> (a) "• • • the total of fifty Senators established by the Constitution of 1894 shall be increased by those Senators to which any of the larger counties become entitled in addition to their allotment as of 1894, but without effect for decreases in other large counties • • •"

(b) no county may have "four or more Senators unless it has a full ratio for each Senator • • • " and

(c) " • • • every county except Hamilton shall always be entitled [in the Assembly] to one member coupled with the limitation of the entire membership to 150 members • • • ." (par. 13 of complaint)

[fol. 266] Plaintiffs further allege that they have been subjected to "taxation without adequate representation" (par. 18 of complaint) and that the prevailing New York apportionment formula is "contrary to the prevailing philosophy of government in the United States and all Anglo-Saxon jurisdictions." (Complaint, par. 17)

The district court was therefore requested to convene a three-judge court to declare New York State Constitution, Art. III, §§ 2-5, unconstitutional and void; to restrain the Secretary of State from printing, mailing or otherwise distributing any election materials, to restrain the Attorney General from enforcing said constitutional and statutory provisions, and the aforementioned municipal and county officials from taking any action under such existing laws (complaint, pp. 15-16). Before the district judge, the defendants moved to dismiss the complaint for lack of jurisdiction over the subject matter and failure to state a claim upon which relief could be granted. The district judge in convening this three-judge court denied the motion to dismiss without prejudice to the right of the defendants to renew such motion before the three-judge statutory court. WMCA Inc. v. Simon, D.C.S.D.N.Y., 1961, 196 F. Supp. 758. This court is further asked "to retain jurisdiction of this cause until such time as the legislature of the State • • • provides for such apportionment of the State legislature as will insure to the urban voters of New York State the rights guaranteed them by the Constitution of the United States." (Complaint, par. 17)

[fol. 267] Jurisdiction

"Jurisdiction • • • is the power to consider and decide one way or the other, as the law may require, and is not to be declined merely because it is not foreseen with cer-

tainty that the outcome will help plaintiff." Geneva Furniture Co. v. Karpen, 1915, 238 U.S. 254. "Jurisdiction" connotes the power to decide a case on its merits. Kibler v. Transcontinental & Western Air, D.C.E.D.N.Y., 1945, 63 F. Supp. 724.

Even before the case of Gomillion v. Lightfoot, 1960, 364 U.S. 339, the United States Supreme Court never held that the federal courts were without jurisdiction over matters concerning legislative apportionment involving either Congressional or state legislative apportionments. Rather, it appears that the court has seen fit in specific instances to decline to exercise its equity power in that area.

Defendants in opposing jurisdiction herein rely on the determination in Colegrove v. Green, 1946, 328 U.S. 549, rehearing denied 1946, 329 U.S. 825, 828. It is argued that the Colegrove case decided that there was no jurisdiction in the federal courts in *suits involving apportionment*. An examination of the opinion will reveal that this interpretation is incorrect. In Colegrove, the plaintiff complained that the state legislature had failed to reapportion the Illinois *Congressional* Districts for some forty years and that [fol. 268] inequality of voting power resulted. The statutory court concluded that it was bound by the decision in Wood v. Broom, 1932, 287 U.S. 1[1] and, accordingly, dismissed the suit.

In the United States Supreme Court in Colegrove v. Green, supra, only seven justices participated. Chief Justice Stone heard the argument, but died before the decision. Mr. Justice Jackson took no part in the consideration or decision of this case. Mr. Justice Frankfurter wrote the opinion of the court, in which Mr. Justice Reed and Mr. Justice Burton concurred. Mr. Justice Black dissented in an opinion in which Mr. Justice Douglas and Mr. Justice Murphy joined. This dissent, among other things, stated that (1) that Wood v. Broom, 287 U.S. 1 did not preclude granting equitable relief in this case (Colegrove); and (2) that jurisdiction existed.

---

[1] In Wood v. Broom, 1932, 287 U.S. 1, the court held that the Reapportionment Act of 1911, requiring that Congressional election districts be of contiguous and compact territory and as nearly as practicable of equal population, applied only to districts formed under that Act and not to the Apportionment Act of 1929.

[fol. 269] An examination of the Frankfurter opinion, which affirmed the statutory court's dismissal of the complaint, reveals that Mr. Justice Frankfurter's position was, among other factors, based upon (1) a dismissal for *want of equity* (p. 533); and (2) the fact that the authority for dealing with the problems involved resided with Congress (p. 554). It was, I believe, solely to sustain the policy of Congressional control and the *consequent* lack of wisdom of court interference that he used such phrases as:

> "The one stark fact that emerges from a study of the history of Congressional apportionment is its embroilment in politics, in the sense of party contests and party interests. • • •" (p. 554)
>
> "• • • Courts ought not to enter this political thicket. • • •" (p. 556)

Mr. Justice Rutledge, making up the fourth of the prevailing justices, concurred in a separate opinion. Referring to Wood v. Broom, 287 U.S. 1, he wrote in part:

> "• • • [As] the Court's opinion [i.e., in Wood] notes, four justices thought the bill should be dismissed for want of equity.
>
> "In my judgment this complaint [Colegrove v. Green] should be dismissed for the same reason. Assuming that the controversy is justiciable, I think the cause is of so delicate a character, in view of the considerations above noted, that the jurisdiction should be exercised only in the most compelling circumstances.
>
> • • •
>
> "The right here is not absolute. And the cure sought may be worse than the disease.
>
> [fol. 270] "I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed and I join in that disposition of the cause." (pp. 565-566)

Thus, at least four justices out of seven in Colegrove v. Green clearly concluded that jurisdiction existed but that

the complaint should be dismissed for *want of equity*. It may be questioned whether the Frankfurter opinion itself holds otherwise since in 1960 in his opinion in Gomillion v. Lightfoot, 364 U.S. 339, 346, in referring to Colegrove v. Green, he wrote:

> "• • • • The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication . . ."
>
> "• [Note] Soon after the decision in the Colegrove case. Governor Dwight H. Green of Illinois in his 1947 biennial message to the legislature recommended a reapportionment. The legislature immediately responded, Ill. Sess. Laws 1947, p. 879, and in 1951 redistricted again. Ill. Sess. Laws 1951, p. 1924."

The per curiam opinion in South v. Peters, 1950, 339 U.S. 276, 277, involving a county unit system, did not state that an affirmance of a dismissal was based on lack of jurisdiction. Instead, the words are:

> "• • • We affirm. *Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions.* See MacDougall v. Green, 335 U.S. 281 (1948); Colegrove v. Green, 328 U.S. 549 (1946); Wood v. Broom, 287 U.S. 1, 8 (1932); cf. Johnson v. Stevenson, 170 F. 2d 108 (C.A. 5th Cir., 1948)." (Emphasis added)

[fol. 271] See also opinions of Mr. Justice Rutledge in Cook v. Fortson, 1946, 329 U.S. 675, and in MacDougall v. Green, 1948, 335 U.S. 281, 287. Also see observations of Mr. Justice Cavanaugh of the Supreme Court of Michigan regarding Colegrove v. Green in Scholle v. Hare, 1960, 360 Mich. 1, 104 N.W. 2d 63, 70-71.

As Mr. Justice Rutledge pointed out in two footnotes to his opinion in Colegrove, 328 U.S. 549, at pages 565 and 566:

"Want of equity jurisdiction does not go to the power of a court in the same manner as want of jurisdiction over the subject matter. • • •

" 'The power of a court of equity to act is a discretionary one. . . . Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only "to prevent irreparable injury which is clear and imminent." ' American Federation of Labor v. Watson, 327 U.S. 582, 593, and cases cited."

It is perhaps not amiss to state that the following justices of the Supreme Court in one or more apportionment cases [fol. 272] have outrightly held that jurisdiction was present: Brandeis,[1] Stone,[1] Roberts,[1] Cardozo,[1] Rutledge,[2 3 4 5] Black,[2 3 4 5 6 7 8] Douglas,[2 4 5 6 8] and Murphy.[2 3 4 5]

1. Broom v. Wood, 287 U.S. 1.
2. Colegrove v. Green, 328 U.S. 549.
3. Cook v. Fortson and Turman v. Duckworth, 329 U.S. 675.
4. Colegrove v. Barrett, 330 U.S. 804.
5. MacDougall v. Green, 335 U.S. 281.
6. South v. Peters, 339 U.S. 276.
7. Remmey v. Smith, 342 U.S. 916.
8. Anderson v. Jordan, 343 U.S. 912.

In Radford v. Gary, D.C.W.D. Oklahoma, 1956, 145 F. Supp. 541, 545-546, aff'd 1957, 352 U.S. 991, in a dissenting opinion, Wallace, District Judge, pointed out the limitations of the United States Supreme Court decision in Colegrove v. Green, as follows:

" • • • [A] careful reading of the majority opinion makes it amply clear that the Supreme Court was primarily concerned with faithfully adhering to the separation of powers doctrine, and desired to defer to the Congress, a co-equal branch of the federal government, to deal with the matter of congressional districting.

> A complete remedy, law within the control of another branch of the federal government, and inasmuch as Congress possessed the basic right to pass upon the qualifications of its own members, the Federal Judiciary was not going to become embroiled in such controversy. * * *"

[fol. 273] In Dyer v. Kazuhisa ABE, D.C.D. Hawaii, 1956, 138 F. Supp. 220, 233-234, McLaughlin, Chief Judge, wrote:

> "* * * Colegrove v. Green definitely decided that a case involving voting districts was a judiciable question over which a federal court had jurisdiction. Three justices held the court lacked jurisdiction or should not exercise what jurisdiction it had. Three justices felt jurisdiction existed and should be exercised. The deciding vote was cast by Mr. Justice Rutledge. He stated jurisdiction was present, but should not be exercised. Thus *a majority held that a justiciable question was before it, but that in the discretion of the court, equitable jurisdiction should not be exercised.*" (Emphasis added.)

Moreover, as Solicitor General Cox states on page 13 in the brief for the United States as amicus curiae submitted in Baker v. Carr before the Supreme Court:

> "3. In any event, the plurality opinion in Colegrove v. Green, concerning state malapportionment of Representatives, should not be applied to the significantly different problem of state legislative malapportionment. That opinion stated that Article I, Section 4, of the Constitution gives exclusive authority to Congress to secure fair congressional apportionment. But neither that section nor any other part of the Constitution gives Congress such exclusive power with regard to representation in state legislatures." (Brief No. 103.)

Subsequent to Colegrove v. Green, supra, the United States in Colegrove v. Barrett, 1946, 330 U.S. 804, in a per curiam decision stated:

"The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. * * *"

[fol. 274] In a number of cases in which state legislative apportionments have been subjected to attack, the statutory courts or districts courts definitely assumed jurisdiction to determine the constitutionality of such state enactments.

In *MacDougall* v. *Green*, D.C.N.D. Ill., E.D., 1948, 80 F. Supp. 725, aff'd 1948, 335 U.S. 281, the statutory court considered the complaint, filed Findings of Fact and Conclusions of Law relative to the issues of the constitutionality of state nominating petition requirements, and held that the provisions were not repugnant or violative of any provision of the United States Constitution.

In *South* v. *Peters*, D.C.N.D. Ga., 1950, 89 F. Supp. 672, aff'd 1950, 339 U.S. 276, the statutory court held a trial at which evidence was presented and made and filed Findings of Fact and Conclusions of Law determining that there was no constitutional violation.

In *Remmey* v. *Smith*, D.C.E.D. Pa., 1951, 102 F. Supp. 708, aff'd 1952, 342 U.S. 916, a statutory court, in a matter involving the Pennsylvania Apportionment Act, declined to act upon the ground that the suit was prematurely brought, did not dismiss because of lack of jurisdiction but for want of equity.

[fol. 275] In *Magraw* v. *Donovan*, D.C.D. Minn., 1958, 159 F. Supp. 901, Devitt, District Judge, held that the question of the invalidity of a Minnesota legislative redistricting act was within the jurisdiction of the court. It should also be noted that although the three-judge court, when convened, deferred action pending legislative adjustment, that court retained jurisdiction of the case. Magraw v. Donovan, D.C.D. Minn., 1958, 163 F. Supp. 184, 188.

The Supreme Court "has never held that apportionment cases necessarily raise non-justiciable questions." As Solicitor General Cox points out in the brief for the United States as amicus curiae in Baker v. Carr at page 24:

"* * * On the contrary, it has passed on the merits of apportionment systems in several cases and has

granted relief in some of them. Thus, in Smiley v. Holm, 285 U.S. 355, the Court held that the existing Minnesota apportionment of United States Representatives did not meet federal requirements because the governor had refused to approve the bill, and accordingly, the Court ordered an election-at-large. The Court also held a state apportionment law invalid (the governor had vetoed it) and ordered an election-at-large in Carroll v. Becker, 285 U.S. 380. And in Koenig v. Flynn, 285 U.S. 375, the Court affirmed a decision of a state court holding that, in the absence of a valid districting statute (the governor had not approved the resolution of the state legislature) to conform to the increase in Representatives allotted to a state by Congress, the additional Representatives must be elected at large." (Brief No. 103)

[fol. 276] The recent decision in Gomillion v. Lightfoot, 1960, 364 U.S. 339, involved a clear-cut assumption of jurisdiction in a *state* apportionment case. While this determination was based upon the Fifteenth Amendment, a reasonable inference is that the court intended to indicate that it would *test* the validity of *state* apportionment by any applicable federal constitutional provision. The step assumed by the court is to *consider*. This does not depend upon whether equitable intervention eventually ensues or upon the result reached on the merits after jurisdiction is entertained.

The recent action of the Supreme Court in granting reargument in the October 1961 Term of the case of Baker v. Carr, 1961, 366 U.S. 907, involving a Tennessee state legislative apportionment, indicates an apparent continuation of this policy. (For the decision below in Baker v. Carr, see 175 F. Supp. 649 and 179 F. Supp. 824.) Baker v. Carr concerns the failure of a state legislature to comply with a state constitutional requirement and, hence, the questions involved are not equivalent to the issues in the case at bar. There, the petitioners *seek enforcement* of a state provision; here, the plaintiffs *seek to bar enforcement*.

In the Solicitor General's amicus curiae brief (pp. 32-33), heretofore mentioned, he comments pertinently on the Civil Rights Acts of 1957 and 1960, as follows:

[fol. 277] "The enactment by Congress, since the Colegrove decision, of the Civil Rights Acts of 1957 and 1960, 71 Stat. 637, 74 Stat. 86, also affects the reliance in the plurality opinion on the exclusively political nature of the election process. The 1957 Civil Rights Act included a provision expressly conferring jurisdiction upon the federal district courts of actions 'to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, *including the right to vote.*' 28 U.S.C. 1343(4) (emphasis added). Congress thereby made clear that, in its view, questions involving 'political' rights, 'including the right to vote,' were 'meet for judicial determination.' Cf. Colegrove v. Green, supra, 328 U.S. at 552. The 1960 Act specifically authorized the federal courts to consider applications for registration for voting under certain circumstances so as to afford complete judicial protection against discrimination. 74 Stat. 90. Congress thereby emphasized, once again, the national policy of relying on the Judiciary as the organ through which the right to vote is to be made fully effective. Both Acts express the intent of Congress and the national consensus that, whatever disagreement may exist as to other civil rights, (1) the right to vote should be afforded federal protection to the fullest possible extent, and (2) that protection should principally take the form of court action." (Brief No. 103)

In short, in view of the foregoing, the conclusion appears inevitable that basic jurisdiction of the subject matter exists. We, therefore, deny the motion to dismiss because of lack of jurisdiction.

Question of Sufficiency of Complaint

Facts which for the purpose of this determination we must consider as admitted include the following:

1. The New York State Constitutional and statutory provisions in reference to apportionment of State Senators [fol. 278] and Assemblymen which are set forth as exhibits in the complaint.

2. The fact that the citizen population of the senatorial districts varies from as low as 146,666 in the Thirty-Ninth Senatorial District (Counties of Essex, Saratoga and Warren) to as high as 344,547 in the Twenty-Sixth and Twenty-Ninth Districts (located in Bronx County). (See Exhibits III and IV attached to complaint.)

3. The fact that the citizen population of the assembly districts varies from as low as 14,066 (Schuyler County) and 17,461 (Yates County) to as high as 115,000 in Bronx County. (See Exhibits III and IV attached to complaint.)

4. That similar results, perhaps with somewhat greater spread, will be likely to occur as a result of the apportionment in 1962 based upon the 1960 census. (See Exhibits I, II and V attached to complaint.)

5. In general, that the senatorial districts and assembly districts of certain urban areas contain a greater citizen population than the districts in so-called rural areas.

6. That no failure of the legislature to comply with the state constitution is claimed and only the so-called malapportionment of senatorial and assembly districts is here involved. (See minutes of November 15, 1961, pp. 32-33.)

[fol. 279] I believe that this court may take judicial notice[2] of certain additional facts, as follows:

1. The revised Constitution of 1894 containing the present apportionment provisions was submitted to the voters on November 6, 1894 and was approved by a vote of 410,697 to 327,402; the legislative apportionment was approved by a vote of 404,335 to 350,625. See Legislative Manual, New York 1961-1962, page 289. On November 7, 1916, on a vote to revise the Constitution and amend the same, the vote was 506,563 for and 658,269 against. Id. at 292. On November 5, 1957, the vote for a convention to revise the Constitution and amend the same was 1,242,568 for and 1,368,063 against. Id. at 309.

---

[2] People v. Wood, 1892, 131 N.Y. 617; Field v. Clark, 1892, 143 U.S. 649; Stawski v. John Hancock Ins. Co., 1957, 7 Misc. 2d 424; People v. Snyder, 1869, 41 N.Y. 397; Taylor v. City of White Plains, 1954, 135 N.Y.S. 2d 773.

2. In practically every state apportionment results in "over-representation" of the least populated areas. (See Reapportionments of State Legislatures by Lashley G. Harvey, 17 Law & Contemporary Problems 364, 1952; National Municipal League, Compendium on Legislative Apportionment (1st Ed. 1960).)

[fol. 280] 3. The State of New York is divided into 62 counties extending from Suffolk County westward to Chautauqua County, from Richmond County in the south to Saint Lawrence, Franklin and Clinton Counties along the St. Lawrence River and the Canadian border, with a total area of 49,576 square miles, with a variety of agricultural, industrial and other economic interests.

4. New York City with a population of 7,781,984 or 46.0% of the state's population of 16,782,304, has 65 assemblymen or 43.3% of the total assembly, and 25 senators or 43.1% of the total number of senators, while the counties other than those in New York City, with 54.0% of the population, have 56.7% of the total assembly and 56.9% of the senate seats.

5. The courts of the State of New York have approved the present methods of apportionment. Matter of Sherrill v. O'Brien, 1907, 188 N.Y. 185; Matter of Fay, 1943, 291 N.Y. 198; see also Matter of Dowling, 1915, 219 N.Y. 44.

There is no authoritative indication that the relative weight accorded individual votes in elections for the state legislature, pursuant to the applicable provisions of the State Constitution, is protected by the equal protection clause of the Fourteenth Amendment. In fact, the contrary seems true. Section 5 of the Fourteenth Amendment pro-[fol. 281] vides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." Obviously the enforcement of the evident prohibitions of the Fourteenth Amendment is no invasion of state sovereignty, since the people of the states have by the Constitution so empowered Congress to act. Ex parte Virginia, 1879, 100 U.S. 339, 346.

To assert, however, that the Fourteenth Amendment was intended to give Congress or the federal courts con-

trol of the state constitutional provisions for the apportionment of districts for the election of the state legislators is beyond reasonable belief. There is apparently no express or implied incorporation of such power. If it exists, it certainly has never been exercised. Consideration of the existing state constitutions and statutes in force at the time of the adoption of the Fourteenth Amendment creates formidable doubt with respect to any such intent.[3] [fol. 282] The historical basis of county representation was set forth in brief for the United States as amicus curiae on reargument of Baker v. Carr at the October 1961 Term of the Supreme Court in these words:

> "• • • Historically, the claim of political subdivisions to representation regardless of size has been an important reason for departing from the strict rule of apportionment according to population. Early in our history the town or county was often a dominant unit of government, and the colonial assembly and later the State legislature were composed of representatives from these entities. Since it was the town or county that was being represented, in a very real sense, and not the people directly, it was natural to guarantee each unit at least one representative in one,

---

[3] In this connection, Mr. Justice Edwards in Scholle v. Hare, 1960, 360 Mich. 1, 104 N.W. 2d 63, stated in part:

"Of the 37 States in the union in 1868, 9 had constitutional provisions for election of representatives to at least 1 of the houses of their legislatures which based representation on constitutionally described legislative districts with constitutionally allocated representation without any pretense of guarantee of equality of popular representation. These States are Vermont, Rhode Island, Connecticut, New Hampshire, New Jersey, Delaware, Maryland, South Carolina and Nevada. [p. 111]

• • •

"Between 1868 and the present time, additional States have entered the Union. [p. 113]

• • •

"Of the 13 States whose Constitutions were approved for admission, 8 such Constitutions (for the States of Arizona, Alaska, Hawaii, Idaho, Montana, New Mexico, Oklahoma, Utah) contained provisions for election of at least 1 legislative house which fell into 1 of the 3 categories of disproportion • • •." (pp. 113-114)

> and sometimes both, of the branches of the legislature. Such provisions are still found in the constitutions of twenty-seven States. * * *" (pp. 28-29, Brief No. 6)

The Fourteenth Amendment did not invest and did not attempt to invest Congress with power to legislate upon subjects which are within the domain of state legislation. In re Rahrer, 1891, 140 U.S. 545, 554-555. The states have broad powers to determine the conditions under which the right of suffrage may be exercised in the absence of [fol. 283] discrimination condemned by the Constitution (such as the Fifteenth and Nineteenth Amendments).[4] This thought was expressed by Chief Justice Waite in Minor v. Happersett, 1874, 88 U.S. 162, 175, when he wrote:

> "* * * [A]fter the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.' The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?"

The Minor case held in effect that the limitation of suffrage to male citizens was not a violation of the Fourteenth Amendment.

---

[4] Lassiter v. Northampton County Bd. of Elections, 1959, 360 U.S. 45; Smith v. Allwright, 1944, 321 U.S. 649, rehearing denied, 322 U.S. 769; Guinn v. United States, 1915, 238 U.S. 347. See also United States v. Cruikshank, 1876, 92 U.S. 542; Davis v. Schnell, D.C.D. Ala., 1949, 81 F. Supp. 872, aff'd, 336 U.S. 933.

[fol. 284] The Fifteenth Amendment and the Nineteenth Amendment together provide that the rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, previous condition of servitude or sex. "In fact, the very command of the Amendment [i.e., the Fifteenth] recognizes the possession of the general power of the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals. • • • [T]he amendment does not change, modify or deprive the States of their full power as to suffrage except of course as to the subject with which the Amendment deals and to the extent that obedience to its command is necessary." Guinn v. United States, 1915, 238 U.S. 347, 362. See also Pope v. Williams, 1904, 193 U.S. 621. The right to suffrage is not inherent in citizenship, nor is it a natural and inalienable right. Unless restrained by constitutional limitations, the legislature may lawfully confer the right of suffrage upon such portions of the citizens of the United States, as it may deem expedient, and may deny that right to others. United States v. Miller, D.C.D. Ind., 1901, 107 Fed. 913. See also United States v. Reese, 1875, 92 U.S. 214.

The Fourteenth, Fifteenth and Nineteenth Amendments were not designed to abrogate the Tenth Amendment, which states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," [fol. 285] except to the extent reasonably indicated by the restrictions of such subsequent amendments. Siegel v. Ragen, 7 Cir., 1950, 180 F. 2d 785, cert. denied, 339 U.S. 990, rehearing denied, 340 U.S. 847. See United States v. Butler, 1936, 297 U.S. 1; Gordon v. United States, 1864, 117 U.S. 697; The Collector v. Day, 1870, 78 U.S. 113, 124.

The United States Supreme Court has repeatedly acted adversely upon claims involving complaints similar to the one in this case. Cook v. Fortson, D.C.N.D. Ga., 1946, 68 F. Supp. 624 and Turman v. Duckworth, D.C.N.D. Ga., 1946, 68 F. Supp. 744 (county unit system), appeals dismissed, 329 U.S. 675; MacDougall v. Green, D.C.N.D. Ill., 1948, 80 F. Supp. 725 (requirements of signatures of 200 qualified voters from each of at least 50 counties as a pre-

requisite for nomination for state office), aff'd, 1948, 335 U.S. 281; South v. Peters, D.C.N.D. Ga., 1950, 89 F. Supp. 672 (county unit rule), aff'd, 1950, 339 U.S. 276 ("Relief prayed for be denied and that the petition be dismissed."); Remmey v. Smith, D.C.E.D. Pa., 1951, 102 F. Supp. 708 (complaint—malapportionment of state legislative districts), appeal dismissed, 1952, 342 U.S. 916 (lack of a substantial federal question); Kidd v. McCanless, 1956, 200 Tenn. 273, 292 S.W. 2d 40 (malapportionment of state legislative districts), appeal dismissed, 1956, 352 U.S. 920; Radford v. Gary, D.C.W.D. Okla., 1956, 145 F. Supp. 541 (state legislature apportionment of state legislative districts), aff'd 1957, 352 U.S. 991; Matthews v. Handley, D.C.N.D. [fol. 286] Ind., 1959, 179 F. Supp. 470 (attempt to have federal court declare a state revenue unconstitutional because enacted by a state legislature in which districts were not apportioned as required by state constitution), aff'd, 1959, 361 U.S. 127.

Substantial authority thus supports the position taken by this present statutory court. In MacDougall v. Green, 1948, 335 U.S. 281, in a per curiam opinion, the majority of the Supreme Court stated:

> "• • • *To assume that political power is a function exclusively of numbers is to disregard the practicalities of government.* Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States. Colegrove v. Green, 328 U.S. 549, and Colegrove v. Barrett, 330 U.S. 804." 335 U.S. at 283-284 (Emphasis added) (Nominating procedures.)

Cf. Wood v. Broom, 1932, 287 U.S. 1, where Justices Brandeis, Stone, Roberts and Cardozo were of the opinion that the decree should be dismissed "for want of equity" (congressional districts involved).[5]

[fol. 287] Opinions by previous three-judge courts are in agreement with this court. In a per curiam majority opinion in South v. Peters, D.C.N.D. Ga., 1950, 89 F. Supp. 672, the court stated:

> "Plaintiff's proposition that a vote in Fulton County has only one tenth the force that it would have but for the county unit rule of the Neill Primary Act, which is unjust and undemocratic, has strong appeal, but it is not a matter for this court to decide. Our question is primarily whether the federal Constitution is violated thereby. In general, that Constitution is not committed to elections by the people over the whole affected territory in which every vote will have equal weight, but rather the voting is by smaller units of unequal population and unequal voting power for each vote. • • • [p. 679]
>
> • • •
>
> "We therefore cannot say there is any general constitutional principle forbidding or discouraging the use of territorial subdivisions in fixing the manner of conducting an election by the people. Whether subdivisions shall be made and how closely they shall be equalized is a matter of policy, that is to say, is a political question in which courts of equity may not meddle to set up their own ideas. • • • [p. 679-680]
>
> • • •

---

[5] Holmes, District Judge, on a three-judge court, dissenting in Broom v. Wood, D.C.S.D. Miss., 1932, 1 F. Supp. 134, and whose position was in effect sustained by the United States Supreme Court in Wood v. Broom, supra:

> "• • • The equal protection clause of the Fourteenth Amendment is inapplicable. No statutory or constitutional provision gives any elector the right to vote in a district numerically equal in inhabitants to every other congressional district. • • •" (1 F. Supp. at 137)

> "The federal Constitution does not take from the States their right to set up their own internal organization and prescribe the manner of State elections. • • • " (p. 680)

Biggs, Circuit Judge, for a three-judge court in Remmey v. Smith, supra declared:

> " • • • *A fortiori* if a court of the United States should not compel a State Legislature to effect a reapportionment relative to the national representative elective system, it should not do so in respect to an apportionment system whereby Representatives in States legislatures are to be chosen. An action such as that at bar may strike at the very heart of our dual system of government under which the United States and the States must remain sovereign in their spheres. • • • " (p. 710)

[fol. 288] In a concurring opinion by Bard, District Judge, in the same case, it was stated:

> "The free and untrammeled right or privilege of suffrage is not given by any article of or Amendments to the Federal Constitution. • • • " (p. 711)

The Supreme Court of Wisconsin in State ex rel Thomson v. Zimmerman, 1953, 264 Wis. 644, 60 N.W. 2d 416, held that a statute providing that area shall be figured at 30% and population at 70% in establishing the 33 districts each of which is entitled to a representative in the state senate did not deprive citizens of equal protection of the laws contrary to the Fourteenth Amendment of the federal Constitution. "We consider that it lies with the people of the state to determine the basis upon which legislative districts are to be established and their will in this is final."*

---

* Anthony Lewis, (Legislative Apportionment and the Federal Courts, 71 Harv. L. Rev. 1057, April 1958) has stated:

"• • • interests other than population may be important in devising a system of representation. For example, geographic areas may have political interests that suggest their use as units of

[fol. 289] The plaintiffs charge the State of New York with a "purposeful and systematic plan" to discriminate against certain geographic areas and classes of persons. (Par. 17 of complaint) However, the rule is general with reference to the enactments of all legislative bodies that the courts cannot, with certain exceptions, inquire into the motives of the legislators. Soon Hing v. Crowley, 1885, 113 U.S. 703, 710. "The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge and in good faith." United States v. Des Moines &c. Company, 1892, 142 U.S. 510, 544. See also Sonzinsky v. United States, 1937, 300 U.S. 506, 513; McGowan v. Maryland, 1961, 366 U.S. 420, 468, 469.

I, therefore, find that the complaint fails to state a claim upon which relief can be granted and, accordingly, it must be dismissed. In this connection, I have not considered the affidavits separately submitted by the plaintiffs, since I have concluded that the motion may be determined upon the complaint (including exhibits attached) alone.

Want of Equity and Want of Justiciability

If the insufficiency of the complaint be not adequate to require dismissal of the complaint, as I believe it is, then the want of equity in the relief sought, or, to view it slightly differently, want of justiciability, clearly demands dismissal.

[fol. 290] In New York State, as already enunciated, the present system of legislative apportionment, whatever may be its merits, has been imbedded in a state constitution which has been approved by referendum of the voters who have subsequently voted to retain the constitution in which the method adopted is contained. The legislative acts are wholly in accord with the state constitutional requirements.

---

representation. The only system based entirely on population, without regard to geography, would be one of proportional representation. Representation based on districts of approximately equal population tends to accommodate both geographic and numerical interests."

In whatever manner we may view the basis of Judge Frankfurter's admonition in Colegrove v. Green, supra, that "Courts ought not to enter this political thicket," the proposed and unprecedented direction by a federal court of the *state constitutional provisions* in respect to state legislative apportionments would initiate a far-reaching revision of federal-state relationships. Efforts to control the basic law of the states in such matters would impose an imponderable burden upon the federal courts in nearly all of the states of this union. The inherent impracticabilities of such a course demonstrate the want of equity or justiciability in such a procedure.

Whether the Supreme Court of the United States in disposing of Baker v. Carr, supra, recently reargued and now sub judice, will decide that the Tennessee voters under federal constitutional provisions have a right to federal enforcement of the Tennessee state constitutional apportionment provisions, is yet to be determined. That question [fol. 291] involves effectuation of a specific plan. This case involves interference with the enforcement of state constitutional provisions as well as some consequential but ill-defined supervision of the formation and enactment of a substitute plan.

The teachings of the decisions of the Supreme Court show that want of equity or justiciability demands the dismissal of this suit. These factors, I believe, were the decisional rationale revealed in cases in which the complaint was dismissed because of the "want of a substantial federal question" or because of "want of equity." See Colegrove v. Green, supra; Colegrove v. Barrett, supra; MacDougall v. Green, supra; South v. Peters, supra; Remmey v. Smith, supra.

Thus, want of equity and justiciability demand denial of the relief sought.

In view of the foregoing, it is unnecessary to pass upon the motion to dismiss as to the plaintiff W.M.C.A., Inc. upon the ground of lack of standing.

The complaint is dismissed.

So ordered.

Dated: New York, N. Y., January 11, 1962.

[fol. 292] RYAN, District Judge, concurring:

I concur with Judge Levet and the conclusions he has reached that this Court has jurisdiction to entertain this suit and that the complaint should be dismissed on its merits.

Although there is authority for argument that federal courts lack jurisdiction to pass on the propriety of state legislative apportionment, Colegrove v. Green, 328 U.S. 549 (1946), subsequent decisions[1] appear to hold that federal courts do have jurisdiction to rule on the Constitutional propriety of state legislative apportionment but that this jurisdiction should be exercised only under the most compelling circumstances.

The breadth and scope of the compelling reasons which would support exercise of this jurisdiction have not been specifically defined but *Gomillion* v. *Lightfoot*, 364 U.S. [fol. 293] 339, 346 (1960), seems to carry the implication that an attempt by a state to abridge the vote or operate to effectively discriminate against any particular class or group through the fixing of internal political boundaries or legislative election districts will lie within this area of compelling circumstances. Apparent and patent violation of the 15th Amendment or of any other specific injunction of the Constitution would then lift the propriety of state action out of the so-called political sphere.

There is no claim made here that the apportionment formula before us or the laws enacted to apply it effect a discrimination against any particular racial or religious group. The complaint is that the method of apportionment gives rise solely to territorial or purely geographical discrimination which grossly dilutes the vote of urban dwellers. Judicial interference by federal courts with the power of the state to create internal political or geographical boundaries affecting the right of suffrage can not be supported by mere territorial discrimination and nothing more.

---

[1] *Thurman* v. *Duckworth*, 68 F. Supp. 744; appeal dismissed 329 US 675; *South* v. *Peters*, 89 F. Supp. 672, aff'd 339 U.S. 276; *Kidd* v. *McCanless*, 200 Tenn. 273, appeal dismissed 352 US 920; *Radford* v. *Gary*, 145 F. Supp. 541, aff'd 352 US 991; *Magraw* v. *Donovan*, 163 F. Supp. 184.

This Court, while possessing jurisdiction, on the undisputed facts before us should not interfere in what Mr. Justice Frankfurter has characterized as a "political thicket". I concur with Judge Levet in exercising jurisdiction and in dismissing the complaint.

[fol. 294] WATERMAN, Circuit Judge, concurring:

I concur in denying relief to the complainants.

I believe we must follow the majority result in *Golegrove* v. *Green*, 328 U.S. 549 (1946). Whether we deny relief by adopting the rationale of the three Justices who labeled apportionment matters "political questions" or by adopting that of Mr. Justice Rutledge who thought the Court should decline to exercise its equity jurisdiction, the result in the present case is the same—a dismissal of the complaint without reaching the merits because the issues are "not meet for adjudication." Frankfurter, *J.*, in *Gomillion* v. *Lightfoot*, 364 U.S. 339, 346 (1960), explaining the decision in *Colegrove* v. *Green*.

My colleagues deny relief after having taken jurisdiction of the case. I do not quarrel directly with them, but because I believe this litigation is not justiciable I think it appropriate to point out the admonition of Mr. Justice Frankfurter relative to "jurisdiction" stated by him in *Colegrove*.

> "We are of the opinion that the petitioners ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about 'jurisdiction.' It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our Government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination."

[fol. 295] Judge Levet also recognizes that *Colegrove* may require us to dismiss this case for lack of justiciability. I concur in this part of his opinion. I cannot concur in his

full opinion, however, for I think it unnecessary and undesirable at this time to pass on the justiciability of this or similar future litigation in the event that *Colegrove* v. *Green* should cease to be controlling authority, and I do not think it appropriate for me to express any views with reference to whether the present legislative apportionment in the State of New York violates the Fourteenth Amendment to the United States Constitution.

Therefore, inasmuch as the plaintiffs have failed to state a claim upon which relief can be granted, I concur with my colleagues in dismissing the complaint.

[fol. 296] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—vs—

CAROLINE K. SIMON, Secretary of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, ABE STARK, President of the City Council of the City of New York; A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENNIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

JUDGMENT—January 11, 1962

A Statutory Court consisting of Sterry R. Waterman, CJ, Sylvester J. Ryan and Richard H. Levet, JJ., in an

opinion dated and filed January 11, 1962, having ordered the dismissal of the complaint, it is

Adjudged: The defendants herein have judgment against the plaintiffs.

Dated: New York, N. Y.
January 11, 1962.

Herbert A. Charlson, Clerk—G.E.S.

[fol. 314] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

ORDER ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES—July 10, 1962

It appearing that on January 11, 1962, a three-judge district court consisting of the Honorable Sterry R. Waterman, Circuit Judge, the Honorable Sylvester J. Ryan, Chief

Judge of the District Court, and the Honorable Richard H. Levet, District Judge, determined that, on defendants' motions, the complaint herein should be dismissed; and

It further appearing that an appeal from said dismissal was taken to the Supreme Court of the United States, which Court, on June 11, 1962, vacated the judgment herein and remanded the case for further consideration; and

[fol. 315] It further appearing that, on appeal to the Supreme Court of the United States, that Court granted the motions to substitute Paul R. Screvane in place of Abe Stark and Eugene H. Nickerson in place of A. Holly Patterson, as parties appellee; and

It further appearing that pursuant to Rule 59 of the Revised Rules of the Supreme Court of the United States the mandate of that Court issue on July 6th, 1962;

It Is Hereby Ordered, pursuant to Rule 34 of the Rules of this Court, that the order and judgment of the Supreme Court of the United States be, and it hereby is, made the order and judgment of this Court; and

It Is Hereby Further Ordered that the defendants answer or otherwise move in respect to the complaint herein on or prior to the 30th day of July, 1962.

New York, N. Y.
July 10th, 1962.

Sterry R. Waterman, Sylvester J. Ryan, Richard H. Levet.

July 9, 62. Costs taxed in sum of $100.00 favor of plaintiffs for Judgment Supreme Court of U. S. dated June 11, 1962.

Herbert A. Charlson, Clerk.

Docketed as #65,483. A Judgment on August 9, 1962. At 4:15 P.M.

[fol. 316] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 61 Civ. 1559

W.M.C.A., INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, City of New York, Defendants.

ANSWER OF DEFENDANT, EUGENE H. NICKERSON, ETC.—Filed July 25, 1962

Defendant, Eugene H. Nickerson, Chairman of the Board of Supervisors of Nassau County, sued herein as representative of the Board of Supervisors of Nassau County, by Bertram Harnett, County Attorney of Nassau County, for his answer to the complaint herein:

Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs 3 and 4 therein.

Admits each and every allegation contained in paragraphs numbered 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, [fol. 317] 16, 17, 18, 19, 20, and 21 therein.

Wherefore, the defendant, Eugene H. Nickerson, does respectfully consent and affirmatively requests that the

Court grant to the plaintiffs herein the relief prayed for in their complaint.

Dated, July 19, 1962.

Bertram Harnett, County Attorney of Nassau County, Attorney for Defendant, Eugene H. Nickerson, Chairman, Board of Supervisors of Nassau County, Office & P. O. Address, Nassau County Executive Building, Mineola, New York.

[fol. 320] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civil 1559

W.M.C.A., INC.; R. PETER STRAUS, JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; ABE STARK, President of the City Council of the City of New York; A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County; WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County; DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

ANSWER OF DEFENDANT LEONARD BERMAN, ETC.—Filed July 26, 1962

Leonard Berman, as successor to defendant Owen M. Quinn, Chairman of the Board of Supervisors, Westchester

County, by his attorney Francis J, Morgan, Acting County Attorney, for his answer to the complaint:

First Defense

The complaint fails to state a claim against the said defendant upon which relief can be granted.

Second Defense

Defendant admits the allegations contained in paragraphs "1", "2", "5", "7", "8", "9" and "11" of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 321] contained in paragraphs "3", "4", "10", "14" and "15" of the complaint; and denies each and every allegation contained in paragraphs "6", "12", "13", "16", "17", "18", "19", "20" and "22" of the complaint.

Wherefore, defendant Chairman of the Board of Supervisors of Westchester County demands judgment dismissing the complaint together with costs and disbursements.

Dated, June 21st, 1962.

Francis J. Morgan, Acting County Attorney of Westchester County, Attorney for Defendant, Chairman of the Board of Supervisors of Westchester County, Office & P.O. Address, County Office Building, White Plains, N. Y.

[fol. 322] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; ABE STARK, President of the City Council of the City of New York; A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County; WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County; DENNIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

ANSWER OF DEFENDANTS, CAROLINE K. SIMON AND LOUIS J. LEFKOWITZ—Filed July 27, 1962

The defendants Caroline K. Simon and Louis J. Lefkowitz answer the complaint as follows:

First Defense

This Court lacks jurisdiction over the subject matter of this action.

Second Defense

The complaint fails to state a claim upon which relief can be granted.

Third Defense

N. Y. Const. Art. III, §§2-5, and State Law §§121, 123 do not violate the Constitution of the United States.

[fol. 323]

Fourth Defense

The People of the State of New York have the right, under N.Y. Const. Art. XIX, § 2, to convene a constitutional convention and amend the State Constitution, without the approval of the Legislature.

Fifth Defense

The People of the State of New York, exercising their rights under N.Y. Const. Art. XIX, § 2, have repeatedly refused to alter the present State Constitutional formula for apportioning members of the Legislature. In 1915 and 1938, pursuant to Article XIX, § 2, the People rejected proposals by their constitutional convention to amend the apportionment formula. In 1916 and 1957, the People of the State of New York voted against holding a constitutional convention.

Sixth Defense

The 1962 legislative elections are so imminent that it would be impracticable to grant plaintiffs' demand for injunctive relief. Pursuant to the New York State Election Law, primary elections are to be held on September 6, 1962; designating petitions are now being circulated and must be filed between July 31 and August 7, 1962; and independent nominating petitions must be filed during the week beginning September 17, 1962. Thus, the granting of an injunction would in effect prevent the election of a new Legislature, contrary to the best interests of the People of the State of New York.

Seventh Defense

Since W.M.C.A., Inc., is a corporation and not a qualified voter, it lacks standing to challenge the State Constitu-
[fol. 324] tional and statutory provisions here attacked.

Eighth Defense

1. Defendants deny the allegations of paragraphs 12, 15, 16, 17, 18 and 22 of the complaint; admit the allegations of paragraphs 2, 3, 7, 8, 9 and 11; and allege that they

are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4.

2. Defendants deny the allegations of paragraph 1 of the complaint, except that they admit that plaintiffs purport to base their complaint upon the Civil Rights and Declaratory Judgment Acts.

3. Defendants admit the allegations of paragraph 5 of the complaint, except that Paul Screvane is now President of the City Council of the City of New York and Eugene Nickerson, Leonard Berman and Arthur M. Cromarty are now the Chairmen respectively, of the Boards of Supervisors of Nassau, Westchester and Suffolk Counties.

4. Defendants deny the allegations of paragraph 6 of the complaint, except that they admit that plaintiffs seek declaratory and injunctive relief.

5. Defendants deny that the committee is preparing its report on the basis of the "preliminary" 1960 census figures; allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegation that the proposed reapportionment is being prepared "at considerable cost and expense to the taxpayers"; and admit the other allegations of paragraph 10 of the complaint.

[fol. 325] 6. Defendants deny the allegations of paragraph 13 of the complaint, except that they admit that the State Constitution in effect provides (a) that no county shall have four or more senators unless it has a full ratio for each senator; (b) that if any county having three or more senators is entitled to more senators than in 1894, the total membership of the senate is increased to that extent; and (c) that each county except Hamilton is entitled to at least one assemblyman in the 150-member assembly.

7. Defendants deny the allegations of paragraph 14 of the complaint, except that they admit that the figures stated for citizen population and for senate and assembly representation are accurate.

8. Defendants deny the allegations of paragraph 19 of the complaint, except that they admit that they are required to perform their duties in accordance with the Constitution and statutes of the State of New York.

9. Defendants admit that they are required to perform their functions consistent with the Constitution of the State of New York; admit that an amendment to the State Constitution under the provisions of Article XIX, § 1, could not be effected "prior to the next statewide election in 1962 or for sometime thereafter"; and deny the other allegations of paragraph 20 of the complaint.

[fol. 326] Wherefore defendants demand judgment that the complaint herein be dismissed and that they have their costs and disbursements of this action.

Louis J. Lefkowitz, Attorney General of the State of New York, Attorney pro se and for Defendant Simon, By: Irving Galt, Assistant Solicitor General, Office & P.O. Address, 80 Centre Street, New York 13, N.Y.

New York, N.Y., July 25, 1962.

[fol. 328] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

ANSWER OF DEFENDANT, ARTHUR M. CROMARTY, ETC.
—Filed July 31, 1962

Arthur M. Cromarty, as successor by election to defendant William J. Leonard, Chairman of the Board of Supervisors of Suffolk County and as representative of such Board, by George W. Percy, Jr., County Attorney of Suffolk County, for his answer to the complaint:

First Defense

The Complaint fails to state a claim against the said defendant upon which relief can be granted.

Second Defense

Admits the allegations contained in paragraphs 1, 2, 5, 7, 8, 9 and 11 of the complaint; alleges that he is without [fol. 329] knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 3, 4, 10, 13, 14 and 15 of the complaint; and, upon information and belief, denies each and every allegation contained in paragraphs 6, 12, 16, 17, 18, 19, 20 and 22 of the complaint.

Wherefore, defendant Chairman of the Board of Supervisors of Suffolk County demands judgment dismissing the complaint, together with costs and disbursements.

Dated: July 27, 1962.

George W. Percy, Jr., Suffolk County Attorney, Attorney for Defendant Chairman of the Board of Supervisors of Suffolk County, Office and Post Office Address, Suffolk County Center, Riverhead, New York.

[fol. 330a] [File endorsement omitted]

[fol. 332]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

61. Civil 1559

W.M.C.A., INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, ABE STARK, President of the City Council of the City of New York; A. HOLLY PATTERSON, Chairman, Board of Supervisors, Nassau County; OWEN M. QUINN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENNIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

Transcript of Hearing—August 1, 1962

New York, August 1, 1962;
10 o'clock a.m.

Before: Hon. Sterry R. Waterman, Circuit Judge, Hon. Sylvester J. Ryan, District Judge, and Hon. Richard H. Levet, District Judge.

[fol. 333] APPEARANCES:

Robinson, Silverman, Pearce & Aronsohn, Esqs., and Max Gross, Esq., Attorneys for Plaintiffs; Leonard B. Sand, Esq., Max Gross, Esq., and Matthew Silverman, Esq., of Counsel.

Irving Galt, Esq., Assistant Solicitor General, Attorney for Defendant Louis J. Lefkowitz, Attorney General of

the State of New York; Irving Galt, Esq., George C. Mantzoros, Esq., and Sheldon Raab, Esq., of Counsel.

Bertram Harnett, Esq., Attorney for Nassau County; Eugene H. Nickerson, Esq., and Douglas P. Null, Esq., of Counsel.

Francis J. Morgan, Esq., Attorney for Westchester County; Irving Libenson, Esq., Assistant County Attorney, of Counsel.

Leo A. Larkin, Esq., Corporation Counsel of The City of New York, attorney for Board of Elections, President of the City Council, et cetera; Benjamin Offner, Esq., and George H. P. Wight, Esq., of Counsel.

George W. Percy, Jr., Esq., Attorney for Suffolk County; Stanley Corwin, Esq., of Counsel.

[fol. 334] Judge Waterman: First of all, I think we ought to check the appearances. There may have been some changes since we had the case before and have been riding up and down.

For the plaintiffs, ready?

Mr. Sand: Ready for the plaintiffs, your Honor.

Judge Waterman: You are?

Mr. Sand: Leonard B. Sand, and my co-counsel are Max Gross and Mr. Matthew Silverman.

Judge Waterman: And for the State of New York?

Mr. Galt: The same appearances, if your Honor please: Irving Galt, George C. Mantzoros and Sheldon Raab.

Judge Waterman: And who is going to address us? Are you?

Mr. Galt: Yes, your Honor.

Judge Waterman: And for the Corporation Counsel of The City of New York?

Mr. Offner: My name is Benjamin Offner, and my associate is George B. Wight. We are both here and represent the City Council and the defendants constituting the Board of Elections.

[fol. 335] Judge Waterman: As I understand the pleadings today, there is very little that you will say to us; it has all been pleaded; is that right?

Mr. Offner: We will probably agree with everything the plaintiffs will say.

Judge Waterman: Do you wish any time?

Mr. Offner: I can't say at the present time.

Judge Waterman: All right.

Nassau County, County Chairman. Is there a difference between the County Chairman and the county attorney?

Mr. Nickerson: Not at all. Since the case was in this court, your Honor, there has been a change in the chairman of the board.

Judge Waterman: Yes. I know.

Mr. Nickerson: And a change in county attorney. Mr. Douglas Null of the county attorney's office will represent me. I would like to make an opening statement if you will allow it.

Judge Waterman: Well, we always like to hear from you.

Westchester County?

Mr. Libenson: My name is Irving Libenson, assistant [fol. 336] county attorney. The present county attorney is Francis J. Morgan. There has been a change in the Board of Supervisors. When this action originally started, it was started in the name of Owen M. Quinn, who was then chairman of the Board of Supervisors, and the present chairman is Leonard Berman.

Judge Waterman: And you are moving that the names of the defendants be so changed?

Mr. Libenson: Yes, your Honor.

Judge Waterman: So ordered.

Are there any other names?

Mr. Libenson: That is all.

Judge Waterman: That is it.

Will you, sir, be requesting time also?

Mr. Libenson: I cannot say at this time.

Judge Waterman: All right.

Suffolk County?

Mr. Corwin: No change. Stanley S. Corwin. We also have the same situation that took place in Westchester. Arthur N. Carmody is now chairman of the Board of Supervisors and should be substituted for William J. Leonard.

We are going to associate ourselves with the position of the State of New York and will not be asking for any [fol. 337] time.

Judge Waterman: Judge Levet has asked me, Mr. Nickerson, to ask you if you have changed any of your pleadings. As I recall, they were submitted last December—

Mr. Nickerson: Yes, they have; they were changed. Previously the County Supervisors supported the position of the State of New York, and after I took office we reversed, and now we support the position of the plaintiffs.

Judge Waterman: That I knew, and the pleadings indicate that. That was the situation at the time of the hearing, yes.

All right. Now, we are assuming that no one is going to put in any sworn testimony, or rather evidence; is that correct?

Mr. Galt: No, if your Honor please. I think it might be—

Judge Waterman: Well, these assumptions are rebuttable.

Mr. Galt: Of course, there was no preliminary conference, and we could only guide ourselves by the letter which stated a hearing would be held. We have all assumed—Mr. Sand and I certainly have assumed—that this [fol. 338] meant the calling and presentation of witnesses, and we have assumed that is what the procedure would be.

I would think that because of some preliminary matters that required discussion, with the permission of the Court I would like to be able to approach the bench with counsel. There are some things which I think should be gone over first, if I may respectfully suggest it.

Judge Waterman: If we do move into chambers, it should be on the record anyway, and we might as well have it right here out in the open.

Mr. Sand: Your Honor—

Judge Waterman: What do you wish to put in in addition to your voluminous affidavits?

[fol. 339] Mr. Sand: In essence, what the plaintiff wants to put in—

Judge Waterman: Do you think judges do not know much about political processes? We live in this world, you know.

Mr. Sand: I am perfectly prepared to assume that, and indeed it is the ardent wish of the plaintiffs. In essence, what we want to present by way of factual evidence is the material contained in the affidavits, and we are perfectly willing to stipulate, if your Honors please, that with respect to the affidavit of Professor Silva that if she were called she would testify that the facts with respect to the apportionment of the State of New York are as set forth in the affidavit, and that she is a qualified expert, and that she would testify that her opinions are as set forth in the affidavit. We offered that and make that as a proposed stipulation and offer of proof.

Judge Ryan: Whether or not this is a legal matter is for the courts to determine.

Mr. Sand: The question of whether or not an apportionment is fair and equitable is a matter which has been given considerable study by political scientists and other [fol. 340] persons who have devoted their life to it.

Judge Ryan: The determination of whether or not it is legal is a matter for the courts to determine. Why should the court surrender its judicial prerogative of adjudication?

STATEMENT BY MR. SAND ON POSITION OF THE PLAINTIFFS

Mr. Sand: Let me state the position of the plaintiffs as follows, your Honors. We have experts who are present in the courtroom. We have noted that in other cases throughout the country on occasion the courts have requested that experts appear. We tender them to the court.

We offer to prove that if they were called they would testify that the consensus of opinion among political scientists is that the only fair and equitable basis for apportionment is on population.

Judge Levet: Are you proposing expert testimony on the question of what is a fair plan or are you proposing expert testimony as to whether or not this present situation is or is not constitutional? Isn't that the question which this Court has to decide first before any other question comes into the picture?

Mr. Sand: Yes, your Honor.

[fol. 341] Judge Levet: Are you proposing then that this expert or these experts should come to testify as to what a proposed satisfactory plan is?

Mr. Sand: No, your Honor.

If I may, let me state the position of the plaintiffs.

Judge Waterman: Just a minute. You mentioned Mrs. Silva and then you mentioned experts in the plural. How many people do you have here and who are they and what are they going to testify to? We know pretty much well where the county lines are. Go ahead.

Mr. Sand: Let me repeat, if I may, that the plaintiffs are perfectly prepared to submit their case on the affidavits of Professor Silva and Peter Straus. Preliminary conferences were held between the attorney for the plaintiffs and the attorneys for the State of New York.

We were advised by the State of New York that they would object to such a stipulation and that they would reserve for themselves the right to cross-examine Professor Silva, and they also advised the attorneys for the plaintiffs that it was their intent to call experts. The plain-
[fol. 342] tiffs regard it to be in their best interest to have this case submitted to this Court as expeditiously and as briefly as possible, and we are entirely willing to submit the case insofar as the facts are concerned on those stipulations and present oral argument and the conclusions to be drawn from them, and the only thing which I understand prevents that is the objection of the State of New York.

Judge Waterman: Let me ask the State, do you desire to cross-examine Mr. Straus?

Statement by Mr. Galt on the Position of the Defendants

Mr. Galt: As far as Mr. Straus is concerned, the situation has an additional aura. Perhaps it would expedite it, your Honor, if I were to say, if I might have your permission to proceed that way without directly answering the question, it would expedite it if I were to say this: first, I want it made perfectly clear that the State wants to do what it can to expedite this case. However, we feel that the matter is of such substantial importance that a proper development of the facts and a proper exposure of the facts insofar as the State's side of the case is concerned, and insofar as the entire case is concerned, is in

the public interest and in the interest of the administration of justice.

[fol. 343] Our position is this: we have already prepared a stipulation as to many statistical and other facts of which in any event this Court could take judicial notice. We are prepared to suggest additional facts that might be incorporated in such a stipulation. However, as to the up-dated affidavits taken from the files when we moved to dismiss the complaint originally, we take it they are not a part of the record. They are attached as exhibits to the plaintiff's brief in which case they are invulnerable to any attack by us in the sense they are part of the record, but they are not before the Court as part of the record. However, we would want—I don't know what latitude the Court will give insofar as expert testimony by the plaintiffs is concerned—I will say to the Court that our experts will be prepared, I am sure, to testify either to opinion testimony on facts or to facts alone. We have facts to develop which we think are relevant for the consideration of this Court.

As to the affidavits, as to Dr. Silva, if anything of the nature of the matter included in the affidavits other than the purely statistical is to be made part of the record of [fol. 344] this Court, then we think that in all justice we are entitled to cross-examine Dr. Silva. Her testimony should be given orally.

As to Mr. Straus, it is our position, first, that the matters incorporated in his affidavit are in no sense whatever relevant or germane to this case. If, however, they are, we press the further objection that Mr. Straus is not an expert witness qualified to testify in that regard. So we have an additional objection.

This is the scope of the situation insofar as your Honors have been discussing it at the moment.

There are other matters which we believe have to be adjusted before the matter can proceed, but primarily this is the way we view the case.

Mr. Offner: This is in connection with the thing Mr. Galt last mentioned. The City intends to call Comptroller Beame as a witness to testify as to the systematic pattern of legislation enacted by legislatures elected under this

challenged system of apportionment and reapportionment.

Judge Waterman: It cuts both ways.

[fol. 345] Judge Ryan: You do not call that expert testimony. That is simply an argument. The legislative acts are matters of which we may take judicial notice. You may point out these matters that you say flow from these enactments in a memorandum or brief. That is an argument. It is not expert testimony whatsoever.

Judge Waterman: I am sure you are better acquainted in this field of law than we are, but there is a very definite legal position which goes back about 150 years that judges have no business inquiring "into the motives of legislators". I would assume we would exclude anything you have now offered on your own motion.

Mr. Offner: May I make an offer of proof?

Judge Waterman: If we listen to any proof at all, we will certainly listen to offers.

Offer of Proof by Mr. Offner on Behalf of The City of New York

Mr. Offner: I would like to make the offer in support of the allegations of paragraph 18 of the complaint. I intend to call Comptroller Beame of the City of New York to testify to legislation that has been enacted detrimental to the City of New York and discriminatory against the [fol. 346] City of New York, and to the effects as shown by what is known as state aid to local government where the city is discriminated against with respect to other areas of the city which receive the same aid.

Judge Waterman: That concludes your offer re testimony?

Mr. Offner: That's right.

Judge Waterman: Do any of the counties have any testimony?

You want to make an opening statement, Mr. Nickerson, I know. Do you want to offer any testimony?

Mr. Nickerson: No. We think that the facts brought forth in Mr. Straus's affidavits of the effects of the discrimination is certainly subject to proof. Of course, the legislative enactments you take judicial notice of, but I would think you would want to know the facts as to how

much state aid and what flows from it, it seems to me, is relevant to you.

Judge Levet: That is a broad field. There is proof that one flows from the other.

Mr. Nickerson: In the Tennessee case this kind of proof was offered and was thought to be relevant, and we think it relevant here.

[fol. 347] Judge Waterman: Suffolk County?

Mr. Gorwin: We will not be participating.

Statement by Mr. Libenson on the Position of Westchester County

Mr. Libenson: The only position Westchester County takes, it seems to me it is the plaintiffs' burden to prove to this Court that the present legislature in its present apportionment violates the constitutional provision, and it seems to me it has to be done by proper proof and not by just pure argument.

So far as the City of New York and this question of state aid, there are many factors that go into that question. The legislature alone—

Judge Waterman: In other words, you have no desire to put in any evidence of your own, but you possibly may wish to cross-examine the plaintiffs' witnesses if we have any, is that right?

Mr. Libenson: That's right.

Judge Waterman: Mr. Sand, the State says whatever evidence you have in the nature of exhibits is in a different position. You have no objection to moving those over and making them part of the complaint?

Mr. Sand: We have in fact, your Honor, agreed upon a stipulation which contains the census figures and the [fol. 348] sum of the charts and statistics contained in Professor Silva's affidavit. So the record may be clear and so the plaintiffs may preserve the record, may we make a formal offer of proof?

Judge Waterman: All right.

Offer of Proof by Mr. Sand on Behalf of Plaintiffs

Mr. Sand: The plaintiffs offer to prove by competent testimony of witnesses in this courtroom the material set

forth in the affidavits of Professor Ruth C. Silva and in the affidavit of R. Peter Straus, and may I ask that those affidavits be marked for identification and made a part of the record in this case.

Judge Levet: Does that go to proposed reapportionment?

Mr. Sand: No, your Honor. Those affidavits deal with two matters.

Judge Levet: Are they factual or opinions or both? Counsel for the State objected particularly to the opinions.

Mr. Sand: The affidavit of Professor Silva is, we submit, factual. The affidavit of R. Peter Straus is both factual and opinion.

We offer to stipulate that insofar as the affidavits contain matters of opinion that if oral testimony were taken [fol. 349] the witnesses would testify that their opinion is as set forth in those affidavits.

Judge Levet: Mr. Galt asked to cross-examine these individuals.

Mr. Sand: That is the position of the State of New York. Your Honor, we have been examining the various opinions of the other courts and there are now more than a dozen which have been dealing with the identical, almost identical issue.

Judge Waterman: You promised us copies.

Mr. Sand: And we have lodged with the clerk, if your Honor pleases, copies of all the opinions available in New York which have been compiled by the National Municipal League, and they repose on the clerk's desk.

In some of these cases, for example in the Michigan case, the dissenting judges have said that there was not even proffered to the Court a showing that the plaintiffs suffered actual injury as a result of mal-apportionment. When we get to a discussion of the merits, the defendants have indicated in their brief that they will take the position that plaintiffs have the burden of showing invidious dis- [fol. 350] crimination. At the same time they object to efforts made by the plaintiffs to show such discrimination by the only means by which it is possible to show it, by the disparity in numbers, by the intent of the legislature and by the consequences.

We make available to the Court whatever information we think might be relevant, whatever information the other courts have thought might be relevant to this issue.

As I say, we are prepared to submit the case as far as factual presentation is concerned upon the offer of proof which I have just made.

The Court: Thank you, Mr. Sand.

And you object to the offer of proof, Mr. Galt?

OBJECTION TO OFFER OF PROOF BY MR. GALT ON BEHALF OF DEFENDANTS

Mr. Galt: Yes. There have been several suggestions made starting with counsel for the City. If I can treat these matters seriatim as best I remember them, may I suggest first the City's offer of proof brings up a problem of order of proof which is most material.

We do not want to take a technical position. The City wants to file a brief and if the Court wants to take it as an amicus brief, we have no objection whatever. That is [fol. 351] one thing. However, a party which has exhausted its standing before the Court by admitting entirely all the allegations of the complaint hardly seems in a position to skip the fence to the plaintiffs' side and then come into the middle of our case, put a rebuttal in the middle of our case, and have us go through a revolving door meeting issues on every side of the case with plaintiffs firing broadside and defendants cross-firing. This I think is not in the interest of proper procedure here.

However, we wish to make it clear that we do not press this point, because we think that the City is not entitled, if it wishes to take any particular point of view it pleases to do so, but because of these practical considerations.

As to the plaintiffs' offer, first I wish to say this: a very peculiar result would follow from adopting the procedure suggested by the plaintiffs, mainly their prima facie case, if it could stand up on that basis, without a witness being called, without any cross-examination on our part, would have us proceeding with a case develop[fol. 352] ing facts as to which they would cross-examine. I don't want to talk about the burden of proof, but may

I just say this, that if the plaintiffs' theory of immediately shifting the burden of proof on a merely statistical showing is correct, then I venture to say that a prima facie case can be made out against virtually every state legislature in the nation simply on a statistical showing. But the states will be few, if any, which adhere strictly and exclusively to population basis.

Further, I want to say this, as far as their suggestions are concerned, we are prepared to meet, if need be, all of this extraneous evidence about legislation presumably unfair to the City. If this courtroom is sought to be the proper place to parade an exhibition of that sort, then we will go along with that.

We do, however, want to note, and at the appropriate time of these proceedings we will note, our objection to the entire irrelevancy, immateriality and incompetency of such testimony. I can only suggest to the Court that we will of course be amenable to whatever can be done to expedite this without, however, in any sense prejudicing our case.

[fol. 353] We feel if need be that if the plaintiffs can get past the prima facie case in the dilemma they are now in, which exposes the weakness of their case, then we will be prepared, if your Honors please, to proceed with witnesses and in any proper form which is appropriate to this forum.

[fol. 354] COLLOQUY BETWEEN COURT AND COUNSEL

Judge Waterman: All right.

Now we will of course retire into chambers and consider what the gentleman said about taking oral testimony and the introduction of evidence at this time.

Assuming—as I think it is germane to our discussion—assuming we do nothing about the taking of testimony and proceed directly with argument on the sworn affidavits and exhibits, how much time is the plaintiff going to want?

Mr. Sand: An hour, your Honor.

Judge Levet: One hour?

Mr. Sand: An hour.

Judge Waterman: How much time do you want?

Mr. Null: Five minutes.

Mr. Galt: If your Honor please, if they are going to proceed on affidavits and we are forced to proceed on affidavits, we are directing our energies in this compressed period of time on the assumption that a hearing means something in the nature of a trial, and we tried our best to find out what was the intention of the Court, and from all indications this is what we thought it was, and we so discussed it with the plaintiffs.

[fol. 355] We have no affidavits at this time. If we are forced to proceed on affidavits and if this is the only way in which we can proceed, then I will have to have time. I think in the interests of fairness and justice, I should have time to have affidavits presented on our behalf and submitted prior to the argument.

Plaintiffs have had these affidavits riding all the way through this case.

Judge Waterman: I know. You have been advised of what was in them for a year and a half.

Mr. Galt: Yes. We are prepared—well, if your Honor please, the posture of this case until only recently—the filing of the mandate—was an entirely different one. But as far as that is concerned, we haven't asked for time to prepare our case, but we do think that if, contrary to our expectations and all the indications in this case, this is going to be a matter of submission of affidavits, we are greatly disadvantaged by having to argue without the affidavits before the Court.

This is too vital and important an issue, I respectfully submit, to be disposed of so cavalierly as plaintiff would have it done.

We are prepared to cooperate in every way with the [fol. 356] Court, but if it is to be affidavits, then we submit that we should have that opportunity. Some of our people have not—

Judge Waterman: May I ask you a further question: What in the world can you put in an affidavit that is not in this little book—referring to the Legislative Manual—or isn't in their affidavits, or isn't something that a court is bound by Wigmore to take judicial notice of?

Mr. Galt: If it were as lean as that, and plaintiffs withdrew the affidavits which are already so familiar a part of the parade in this case, we possibly could argue it that way. But if the Court wants a more refined development of those facts—and there are certain things which can be shown—we are going to be dealing with questions of reasonableness, rationality, lack of invidious discrimination. There are certain pertinent things that can very well be brought to the attention of the Court. We feel this case justifies the development of a proper record. If the Court does not wish to hear testimony, contrary to what we had anticipated, then I respectfully submit that we certainly should be able, in affidavit and exhibit form, just as have the plaintiffs, to be permitted to present an appropriate [fol. 357] case for the state on that limited basis, and there are questions—

Judge Waterman: Assuming we overrule you and you take exceptions upstairs to Washington, how much time do you want to argue?

Mr. Galt: May I confer a moment, your Honor?

Judge Waterman: All right.

Mr. Sand: Then may I be heard, your Honor?

Judge Waterman: No. Not now. I will fill in, though. Westchester, do you wish to argue?

Mr. Libenson: No, your Honor.

Judge Waterman: City?

Mr. Offner: I don't think I will take more than a quarter of an hour.

Judge Waterman: As I pointed out when you first stood up, you are in a very peculiar position. We probably would suggest you argue on plaintiffs' side, unless you slip over—

Mr. Offner: Of course—

Judge Waterman: I mean, in the process of proceeding, your argument will precede the argument of the other defendants.

Mr. Offner: Very well.

[fol. 358] Mr. Galt: If your Honor please, we would take, under those circumstances, about an hour and a half.

May I add one thing: that is to say, would the stipulation we have, which culls out any facts that are facts and statis-

tics from the Silva affidavit, there is no need whatever for affidavits from Dr. Silva.

Judge Waterman: You may have been reading the judicial mind. I don't know.

Westchester, what do you say?

Mr. Libenson: It would seem to me that what the plaintiff is doing at the present time is making an offer of summary judgment here by submitting these affidavits, and particularly Mr. Straus' affidavit it seems to me is nothing but pure argument and opinion. Certainly, if we are going to proceed that way, the defendants ought to have an opportunity to submit affidavits in opposition.

Judge Waterman: And you are charging us with your not having had that opportunity?

Mr. Libenson: I don't think any of the defendants have been given notice that an application for summary judgment was going to be made. I don't charge the Court with [fol. 359] that. I say if the plaintiff is making an offer of summary judgment, certainly we should have had notice of that.

Judge Levet: Mr. Sand, may I ask you a question: In connection with this renewed proceeding here now, have you served any notice that you are moving for judgment?

Mr. Sand: I have not moved for summary judgment, your Honor, although I think on the answer of the defendants I could so move.

Judge Levet: You did not move. That is my question. That is all I asked you.

Now, Mr. Galt, does the state move for summary judgment at this proceeding?

Judge Waterman: Do you move to dismiss?

Judge Levet: Or move to dismiss, I mean. Either one.

Mr. Galt: No. We have made no motion, your Honor. We want to see--

Judge Levet: Technically there is no motion here at all; is that so?

Mr. Galt: That is correct, your Honor.

Judge Ryan: What factual issues have been raised by the pleadings which have not been resolved by the stipulation that you have made amongst yourselves?

[fol. 360] Mr. Sand: Your Honor, the plaintiffs have the burden of showing—

Judge Ryan: I didn't ask you that. I said, what factual issues remain now on which the Court is required to take testimony?

Mr. Sand: Whether the apportionment of the State of New York is arbitrary and capricious, whether the apportionment of the State of New York was intentionally designed to discriminate against persons in the class of the plaintiffs, whether or not as a result of the apportionment of the State of New York plaintiffs suffer actual injury.

Judge Ryan: Those facts—are they all resolved either by your pleadings or by the stipulation that you have made?

Mr. Sand: If, your Honor, this Court accepts the position of the plaintiffs, the primary position of the plaintiffs, which is that if there is shown to be a gross disparity between the actual apportionment of the State and the incidence of the population of the State, a prima facie case is made, the answer is yes.

Judge Leyet: Have you made any stipulation or have you merely offered to make a stipulation?

[fol. 361] Mr. Sand: We have not yet physically signed but have agreed upon the contents of a stipulation, which is present in court and—

Judge Ryan: It would be wonderful if you signed it right now and filed it with the Court.

Mr. Sand: Yes.

Judge Ryan: Then we would be in a position to make an intelligent decision as to whether or not testimony should be taken.

Mr. Sand: I believe we are prepared to sign the stipulation, which was only made physically available to me very late yesterday.

Judge Ryan: You told me you are prepared to sign it. Suppose you put your names on it and hand it in to the Court.

Mr. Sand: I am certainly prepared to do that, your Honor.

Judge Ryan: Fine.

Mr. Galt: While the stipulation is being signed, may I say—

Judge Ryan: Let us not interrupt it.

Mr. Galt: In connection with it, if there are any errors, we are prepared to resolve them.

Mr. Sand: Only errors of transposition. Other than that, [fol. 362] there has not been a clerical checking of some of the census figures.

Judge Levet: If you are going to make any changes, you ought to make them promptly.

Judge Ryan: You refer only to changes due to inadvertence, typographical errors—

Mr. Sand: Your Honor, I hope I have answered your question as to whether or not there is anything in the way of factual presentation required that is not covered by the pleadings, and if I may state it again, it is, if the Court please, the plaintiffs' view that a prima facie is made when mal-apportionment is shown to exist. Plaintiffs believe they have made a prima facie case on the complaint and the answer.

Judge Ryan: Suppose the Court does not accept that view?

Mr. Sand: If the Court does not accept that view—

Judge Ryan: Please sign the stipulation first and we will discuss that.

Mr. Sand: If the Court does not accept that view, then obviously there is imposed upon the plaintiffs the burden of showing something more, and so the problem is what [fol. 363] more is there that plaintiffs can possibly show to meet the standard of invidious discrimination, which the Supreme Court invoked when it remanded the case to this Court.

Judge Levet: Doesn't your position in effect require a preliminary decision by this Court? I see no reason why we should make such a preliminary decision.

Judge Ryan: Assuming that the Court will not make this preliminary decision but will resolve the whole matter at one time, how do you hope to pursue this problem that you say exists?

Mr. Sand: Well—

Judge Ryan: What testimony—

Mr. Sand: I assume, if your Honor please, that when the Supreme Court—

Judge Ryan: No, no. Just keep yourself down to this point.

You say if we do not accept the plaintiffs' position that mere geographical discrimination is enough, is invidious, then you have a further burden.

Mr. Sand: Then—

Judge Ryan: I understand that you do not allege purposeful discrimination against any race, religion, creed, sex or national origin?

[fol. 364] Mr. Sand: That is correct, your Honor.

Judge Ryan: That your whole objection is predicated upon the claim that there is not fair representation of urban areas.

Mr. Sand: And that this absence—

Judge Ryan: No. Wait. Will you answer that? Is that your one claim?

Mr. Sand: That is our one claim.

Judge Ryan: What other claim do you have besides that?

Mr. Sand: That the absence of fair representation is the result of a deliberate intent to discriminate against persons in the class of the plaintiffs and that as a result of such discrimination plaintiffs suffer actual injury in violation of the due-process clause as well as the equal-protection clause.

The Court: Now, what testimony would you hope to offer on this?

Mr. Sand: I have offered, your Honor, to rest the case on the matters contained in the affidavits of Dr. Silva and Peter Straus, and it is the objection of the State which precludes that.

Judge Ryan: No. What testimony specifically? Testimony on what subjects?

[fol. 365] Mr. Sand: With respect to the apportionment of the State of New York.

Judge Ryan: Isn't that a matter of record that the Court can take judicial notice of?

Mr. Sand: Yes; it is.

Judge Ryan: So that you will not need testimony on that. It will not be necessary.

Mr. Sand: If I may just pursue that, with your Honor's indulgence—

Judge Ryan: I thought we eliminated that.
Now, what else would you offer?

THREE OFFERS OF PROOF BY MR. SAND ETC.

Mr. Sand: I would offer to show that each rule which specifically operates to restrict and limit the representation of the residents of the City of New York was intentionally devised for the very purpose of creating a class of citizens within the state whose vote was not equal to that of another preferred class of citizens in the state.

Judge Levet: How would you show that?

Judge Waterman: He has quoted from the Legislative Record of 1894, or something like that, about some remarks that were made—

Judge Levet: At the convention?

Mr. Sand: I would offer to show that each of the major [fol. 366] rules that govern the apportionment—I would offer to show the effect on the representation of the citizens residing in the City of New York. I would show the origin of that rule—

Judge Levet: Are you offering to show us what was in the minds of the makers of the 1894 convention? Is that what you are after?

Mr. Sand: I want to show, by the only means by which it is possible to show, that there is intentional discrimination against the citizens of New York.

Judge Ryan: That there was an intention to discriminate?

Mr. Sand: An intention to discriminate against the citizens of the City of New York.

Judge Ryan: Isn't that immaterial, what their intention might have been? It is a question of whether or not the legislation in fact discriminated.

Mr. Sand: Your Honor,—

Judge Ryan: Wouldn't you have to have testimony on that?

Mr. Sand: Your Honor, if I may make an analogy to a similar situation, and that is the jury-exclusion cases, and that is if you show that within a given community there is a certain class that is eligible to serve on the jury and

[fol. 367] that over a period of years no persons in that class have been selected, that is one evidence that there is discrimination. If, on the other hand, you bring in the jury commissioners and they say, "Yes, the reason that there are no members of this class on the jury is because we don't like them," that is certainly relevant evidence to show that there is discrimination.

Judge Ryan: That shows that there was a purpose—

Judge Waterman: Now, listen: there is discrimination on everything, isn't there? I am sitting in the middle because I am a different kind of judge from these fellows. That is discrimination against them.

Mr. Sand: I suppose that is why the Supreme Court did not say "discrimination" but "invidious discrimination," which means harmful discrimination.

May I state it this way: We are jointly engaged in the problem of trying to define what the Supreme Court meant when it said "invidious discrimination."

Judge Ryan: We are not going to do that with testimony in this case.

Judge Waterman: Mr. Reporter, can you find the place [fol. 368] where Mr. Sand made his offers?

Mr Galt: There is a typographical error made on page 24 in our brief, where we spoke of Suffolk County's population from 1950 to 1960. Its population went up 141 per cent and not 14 per cent.

Judge Waterman: We will recess for a moment and discuss this question of your offers and the objections to them.

(Short recess.)

The Clerk: Court is now in session.

Judge Waterman: So that we may have a perfect record and so that all may understand exactly what the Court is doing when it rules, I have asked the reporter to find the plaintiffs' offers of proof, and if you will read them seriatim, we will rule on them one by one.

[fol. 369] (The reporter read the following:

"Mr. Sand: I would offer to show that each rule which specifically operates to restrict and limit the representa-

tion of the residents of the City of New York was intentionally devised for the very purpose of creating a class of citizens within the state whose vote was not equal to that of another preferred class of citizens in the state.")

Judge Waterman: As to that offer of proof, the Court unanimously excludes it on the ground that what caused the Legislature to act or what proof may be introduced at this stage as to the Constitutional Convention's thinking in 1894 would have to be of such a nature that it isn't of any interest to this Court. All we have before us is a question of law, and the question of law is not involved with the intent in the minds of whoever may have happened to be members of the Constitutional Convention of 1894.

You will except?

Mr. Sand: I except.

Judge Waterman: Will you read the next one, please?

(The following was read by the reporter:

"Mr. Sand: I would offer to show that each of the major [fol. 370] rules that govern the apportionment—I would offer to show the effects on the representation of the citizens residing in the City of New York. I would show the origin of that rule—")

Judge Waterman: We interpret that offer of proof to include the last phrase, the origin. That, of course, is a matter of public record. The origin is in the Constitution of the state. We exclude it as immaterial, incompetent and irrelevant.

Mr. Sand: I except.

Judge Waterman: Will you read the next.

(The following was read by the reporter:

"Mr. Sand: I want to show, by the only means by which it is possible to show, that there is intentional discrimination against the citizens of New York.")

Judge Waterman: We interpret that to mean, obviously, that the citizens of New York City, and we exclude that offer on the same grounds as we have excluded the other two.

Now, those are your three offers. We have ruled on all three of them.

Now, may the Court say something?

Mr. Offner: May I just say a word, your Honor?

[fol. 371] Judge Waterman: Well, after me.

Mr. Offner: I am sorry.

Judge Waterman: The gentleman will not yield yet.

We have not, by making these rulings, precluded the introduction of oral testimony. We believe that if you wish to put in oral testimony, if the state desires to cross-examine your witnesses, we have a duty to permit you to do so, but we warn you that evidence offered or testimony adduced of the type and kind of your present offers will probably be excluded because we can ascertain these facts from things we are supposed to take judicial notice of and from the pleadings themselves.

You fully appreciate the limits that I am indicating, correct?

Mr. Sand: I do, your Honor. May—

Judge Waterman: Now, just a minute. The City wants to say something.

Mr. Offner: I just want to have it noted on the record that the defendants represented by the Corporation Counsel take the same exception as is taken by counsel for the plaintiffs. I do not understand that your Honors have ruled on the City's offer of proof that I made with respect to the testimony of the Comptroller of the City of New

[fol. 372] York?

Judge Waterman: Well, we will be happy to rule on that. Are you now getting on to the plaintiffs' side? And you want a ruling now? Or do you want to wait until the defense comes in and wait for a ruling there?

Mr. Offner: Well, it is part of the plaintiffs' proof. At the time I made the offer I said that it is in support of the allegations in the complaint.

Judge Waterman: We will probably exclude it, but we will reserve decision on that point.

Mr. Offner: The reason for that is that the Comptroller is present in court and he is a very busy man, as your Honors may understand. I would like very much to know what your Honors' ruling on that offer is.

Judge Waterman: Restate your offer.

OFFER OF PROOF BY MR. OFFNER, ETC.

Mr. Offner: I offer to prove, through the testimony of the Comptroller, with respect to the allegations of a paragraph of the complaint—I believe it is paragraph 18—that the Legislatures which have been elected pursuant to this challenged malapportionment system have consistently enacted legislation the effect of which is to discriminate against the citizens and the taxpayers of the City of New York as against the citizens and taxpayers of what is known [fol. 373] generally as upstate.

COURT'S RULING

Judge Waterman: The offer is excluded.

Judge Ryan: May I interrupt?

Judge Waterman: Indeed you may.

Judge Ryan: Discriminate in what respect? In respect of the distribution of funds paid out of the State treasury?

Mr. Offner: That is correct.

Judge Ryan: Apportioned amongst the various communities?

Mr. Offner: That is correct.

Judge Ryan: And is that the only form of discrimination that you say has resulted from this legislation?

Mr. Offner: It is the principal form.

Judge Levet: What is it?

Mr. Offner: It is the principal form of discrimination.

Judge Ryan: What else do you allege? What other form of discrimination then do you allege that resulted from this legislation other than financial benefits resulting from distribution of funds collected by the State and distributed amongst the communities of the State and the cities of the State?

[fol. 374] Mr. Offner: It has enacted legislation dealing with the taxation powers of the City, which the City has not been able to use, which is impracticable and, therefore, meaningless.

Judge Ryan: I see. Entirely financial.

Mr. Offner: It is all financial. This aspect, this testimony—

Judge Ryan: You allege no discrimination other than a discrimination arising from financial matters, either in the collection of taxes or the distribution of taxes or funds collected by the State and distributed throughout the whole State to the various communities and cities?

Mr. Offner: That is correct.

Judge Waterman: This suit is brought under the Civil Rights Act, with diminution of rights involved, so Judge Ryan's comments are pretty germane. But the offer is excluded, however, because it is based (a) upon legislation and, (b) the effect of legislation.

As to (a), if you wish us to take judicial notice as to the legislation of the State of New York, which we are required to take judicial notice of anyway, give us a list of the acts and tell us about it. If there has been some unfortunate effect that has been demonstrated in the City [fol. 375] government or in the State government, tell us about it. It is nothing that we are interested in having the Comptroller, able though he is, tell us about orally. We are supposed to know about those things.

If there is something you want us especially to know, point it out to us.

Mr. Offner: They would deal, of course, with a great deal of figures because the entire subject matter is fiscal.

Judge Waterman: That is exactly what I was afraid of. You want the Comptroller to come in and testify generally. We want specifics.

Mr. Offner: Well, we will have specifics, yes, but I can't inform your Honor of the specifics right now.

Judge Waterman: All right, excluded. Also, on the ground advanced by Judge Ryan, that this is not a matter involving finances. This is a matter involving the rights of citizens.

Mr. Null: Sir, one of the plaintiffs is a resident of Nassau County. In view of the position of Nassau County in this case, and in view of the fact that Mr. Sand's offer of proof was particularly directed towards New York City, [fol. 376] we would request your Honors to extend your ruling as concerns Nassau County on Mr. Sand's offer of proof.

Judge Waterman: So extended, and your rights are equally preserved with his.

Mr. Null: I might say, sir, in referring to Mr. Offner's offer of proof, the damage with respect to the lack of aid for Nassau County is something we would like to express, and we would ask your Honors' ruling on an offer of proof in that direction.

Judge Waterman: Your offer is noted, excluded, and your rights are protected, the same as his.

Mr. Sand: Your Honors, for the purpose of the record—

Judge Waterman: You have some other offer?

OFFER OF AFFIDAVITS OF RUTH C. SILVA (EXHIBIT 9) AND R. PETER STRAUS (EXHIBIT 8) FOR IDENTIFICATION

Mr. Sand: I have an offer of proof which the reporter has not read back, relating to the affidavit of Professor Ruth C. Silva, which was marked as Exhibit 9 for identification, and the affidavit of R. Peter Straus, which is Plaintiffs' Exhibit 8 for identification.

I offer to prove by competent testimony the matters set forth in those affidavits.

Judge Waterman: You may proceed with such proof as we consider germane in Dr. Silva's affidavit. We will [fol. 377] find a chair for her somewhere. We will consider the affidavit in so far as we will consider what is germane.

If you wish to have her as a living witness here and give testimony, we will hear her.

Mr. Sand: I believe that your Honors' specific ruling would exclude the matters set forth in both those affidavits, and it is merely for the purposes of the record that I wanted them identified as the matters set forth in Plaintiffs' Exhibits 8 and 9 for identification.

Your Honors have in effect ruled that none of the material set forth in those affidavits would be received by this Court.

Judge Waterman: None of the opinion evidence. None of Dr. Silva's ideas as to what has been the alleged result in her mind of these things. That we certainly consider excludable.

Mr. Sand: I understand your Honors' ruling, and we will call Dr. Silva.

Judge Ryan: He said he wants to have it marked in the record as having been offered.

Judge Levet: I assume that there is an objection to the affidavit.

Mr. Galt: Yes. We made our objection on the record [fol. 378] before, and for the purposes of clarity we reiterate our objection to the affidavits.

Judge Waterman: They have been attached to the pleadings.

Judge Levet: Are they, then, excluded at the present time?

Judge Ryan: They are excluded but marked for identification.

Judge Waterman: It is attached to the original complaint, isn't it?

Mr. Sand: I hand to the clerk the two affidavits.

Judge Waterman: I see. These were admitted before you, Judge Levet?

Judge Levet: They may have been submitted.

Judge Waterman: Have these ever been admitted either before the single judge or the prior three-judge court?

Mr. Sand: No, your Honor. These are in the first instance revised affidavits. They have been made current. They have not been admitted.

Judge Waterman: So the exhibit numbers on them, the identification numbers, have to be changed.

Judge Levet: That was on August 1, 1961, when the [fol. 379] matter, I believe, was somewhere else.

Mr. Sand: Your Honors wonder why they are marked 8 and 9—

Judge Waterman: That is exactly it.

Mr. Sand: To expedite the proceedings, the clerk has marked certain other exhibits so that the Court may not be detained while they are being marked.

Judge Levet: They are not tendered for anything else except for identification at the present time, in the view of the Court, I take it.

Judge Waterman: Will you mark them for identification.

Mr. Sand: They have been marked. They are Plaintiffs' Exhibits 8 and 9.

Judge Waterman: They are still 8 and 9 for identification. All right.

Mr. Galt: Your Honor, one thing should be clarified: to the very best of my recollection—and I think it is correct—these affidavits were not part of the complaint. When the motion was originally argued before Judge Levet, sitting alone, at the time we objected to the affidavits which were submitted, I think, in opposition to our motion and ultimately, when Judge Levet's opinion came down, I believe—and I think that this is correct, Judge Levet, that [fol. 380] you remarked in your opinion that you were making no disposition of our motion but that in arriving at your decision you had not at all referred to the affidavits, but these affidavits were not, as I recall it, and are not now part of the complaint.

Judge Levet: They are offered and they are marked here for identification only, as I understand it.

Judge Waterman: That is correct.

Judge Levet: They are not before us officially.

Judge Waterman: I was confused because of the numbering.

Mrs. Silva's affidavit is now marked Exhibit No. 9. Do you wish to call her?

Mr. Sand: Yes.

Did your Honors wish first to hear preliminary argument, or would your Honors rather proceed directly with the testimony?

Judge Ryan: I understood that you didn't want to call Mrs. Silva in view of the fact that her testimony would only be concerning matters as to which we said we would not receive testimony. You don't want to call her, do you?

[fol. 381] Mr. Sand: The reason I said that I would call

her is that I wished the record to be clear, and Judge Waterman indicated that there was material contained in the affidavit concerning the actual apportionment of the State, as to which the Court would hear oral testimony, and for that purpose I would call her.

[fol. 382] Judge Levet: Can't you submit in lieu of her testimony the factual material in these affidavits and eliminate the alleged expert?

Mr. Sand: I offered to do that, I offered to stipulate that the facts—

Mr. Galt: I believe that the facts as referred to by Judge Levet would be embodied in the stipulation which we have submitted to the Court, and from the factual side I don't know what else could be submitted.

Mr. Sand: I offered to stipulate that if Professor Silva were called she would testify to the facts set forth in her affidavit.

Judge Levet: Can't you indicate on the offer the area which is fact and the area which is opinion, so we can know what the record is before this Court?

OFFERS IN EVIDENCE AND COLLOQUY THEREON

Mr. Sand: There has been marked for identification and the Court has those documents Plaintiffs' Exhibits 1 through 7, and they are various summaries and charts. Three copies have been lodged with the clerk and these are the materials which we would offer to stipulate are the facts to which [fol. 383] Professor Silva would testify.

Judge Levet: Why don't you offer those exhibits?

Mr. Sand: I offer those in evidence.

Judge Waterman: Documents marked for identification Plaintiffs' 1 through 7 are now offered.

Mr. Sand: These are all charts and diagrams contained in the affidavit of Professor Silva and are now contained in the stipulation of the parties.

Mr. Galt: They are offered for identification.

The Court: They are now offered in evidence. I want you to examine them.

Mr. Sand: They are all contained in the affidavit of Professor Silva which was furnished to the State some time ago.

Mr. Galt: May we have time to examine these?

Judge Waterman: Mr. Sand, were these prepared under the direction of Professor Silva?

Mr. Sand: These were personally prepared by Professor Silva as her affidavit indicates, and are based upon census figures and other Government practices.

Judge Waterman: Wouldn't it be desirable to have her sworn?

[fol. 384] Mr. Sand: If the clerk will call Professor Silva.

Mr. Galt: Although I haven't been able in this short period of time truly to analyze these tables which are offered, I object to them most strenuously as evidence for the reason that though they deal in statistics, implicit in the statistics are certain theories as to which we take exception, which we do not think are the applicable theories here. They differ from our own theory as to what apportionment lawfully is and possibly even as to mathematical interpretations.

Incidentally, we would be prepared, this type of evidence is offered, to develop oral evidence of our own.

Judge Waterman: I think Dr. Silva should be sworn and put on the stand. If you desire to interrogate about her theories before you ask us to rule on these papers, we certainly will reserve judgment on your present objection until after she has been sworn.

Mr. Galt: In other words, during the course of her testimony if these are offered it will be much easier to deal with them one by one.

[fol. 385] Judge Levet: Judge Waterman is suggesting you examine her on voir dire on these exhibits in order for us to pass on the objection.

Judge Waterman: It is fundamental in every case where statistics are introduced that they are introduced on the basis of some kind of a theory. So I think you are entitled to cross-examine the person who developed the statistics, and your adversary has told us he was so prepared to do.

Judge Ryan: I understand that these exhibits are not statistics which she has prepared but they are statistics which are available to anybody which she has collated and

set up in a table simply as an aid to the Court. She has taken available statistics and tabulated them.

Mr. Sand: This would be entirely analogous to testimony which is very common—

Judge Ryan: In an income tax case, where you have an accountant who has made a tabulation of your books and is on the stand. Don't take that personally.

Judge Waterman: Why don't you call her?

Mr. Galt: May I offer an objection to the exhibits? I offer the further objection that no proper foundation has [fol. 386] been laid for the admission of these exhibits.

Judge Levet: That is what we are trying to give someone a chance to do, Mr. Galt.

Mr. Sand: Professor Silva, please.

Ruth C. Silva, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Sand:

Q. Will you tell us, Professor Silva, where you are employed?

A. Pennsylvania State University.

Q. In what capacity?

A. Professor of Political Science.

Q. How long have you been so employed?

A. 14 years.

Q. Would you state generally and briefly your educational background and the prior positions you have held?

A. I hold three earned degrees in Political Science from the University of Michigan. Before going to Penn State, I was Instructor of Political Science for two years at Wheaton College in Norton, Massachusetts, and two years prior to that I was a teaching fellow at the University of [fol. 387] Michigan.

Q. Have you also served as a consultant for any governmental bodies?

A. Yes, sir. I worked as research consultant for the Honorable Paul Douglas, United States Senator from Illi-

nois. I worked in the United States Department of Justice when Mr. Brownell was Attorney General. I worked for the Peck Commission.

Q. Would you please state some of your writings in the field of legislative apportionment?

A. I have had an article in the American Political Science Review on apportionment of the New York State Legislature. I had a piece in the Fordham Law Review on the case of Baker v. Carr. I had a piece in the Fordham Law Review on the apportionment of the New York Senate. I have a piece in the current issue of the Duke Law Review on apportionment of the New York Legislature. I have an article coming in the fall issue of the Fordham Law Review. I have a piece coming on apportionment in the new edition of the Encyclopedia of Social Sciences.

Q. Were these articles written on your own initiative?

[fol. 388] A. Let's see. The piece on Baker v. Carr and the piece that is coming in the Fordham Law Review were by invitation. I submitted one article to the Fordham Law Review and they wrote back and asked me to do two others. The Duke Law Review was by invitation. The Encyclopedia was by invitation.

Mr. Sand: I submit, if the Court please, that the witness is qualified to testify as an expert on questions relating to legislative apportionment in general and the New York apportionment in particular.

The Court: What you are about to say is that you are offering through this witness these exhibits?

Mr. Sand: I will proceed to do that.

Q. Professor Silva, have you made a study of the rules which govern the apportionment of the Senate of New York State?

A. Yes, I have.

Q. And in particular have you made a study of a rule which is known as the full ratio rule?

A. Yes, sir, I have.

Q. Can you please tell us what that rule is?

A. The full ratio rule does in fact divide the counties in the State of New York into two groups.

[fol. 389] Mr. Galt: I move that answer be stricken as not responsive.

Judge Ryan: Objection sustained.

Judge Levet: Yes.

Judge Waterman: Yes. It is all in.

Q. Have you made a study of the precise effects of the full ratio rule on the six most populous counties of New York State?

A. Yes, sir.

Q. Would you state why for the purposes of that study the comparison was based on the six most populous counties?

A. Because the Constitution makes that division.

Mr. Galt: I object.

Judge Waterman: I will overrule that objection.

A. The Constitution makes that division. The Constitution provides that apportionment counties having more than three ratio should be made in one way and apportionment counties having less than three ratio should be made in another way. It so happens that there are now six counties having three ratios under the 1960 Census.

Q. So for the purposes of the exhibit which I am about to show you and the others relating to the Senate, you have [fol. 390] used the six-county comparison?

A. Yes, the one that the Constitution does in fact provide.

Q. I show you what has been marked as Plaintiffs' Exhibit No. 1 and I ask you if you recognize that document?

A. Yes, sir, I prepared it.

Q. May I ask on what basis you have prepared this?

A. I am sorry?

Q. What raw material did you utilize in preparing Plaintiffs' Exhibit 1?

A. It is a matter of taking the citizen census figures from legislative documents, and the 1960 citizen census figures are from the United States Department of Justice, and the apportionment laws are in the public laws of the State of New York.

Mr. Sand: I offer Plaintiffs' Exhibit 1 for identification in evidence.

Judge Waterman: I assume you are objecting?

Mr. Galt: I object, your Honor, on the grounds previously mentioned.

Judge Waterman: Do you wish to interrogate Professor Silva?

Mr. Galt: At this point?

[fol. 391] Judge Levet: On Exhibit 1.

Judge Waterman: I don't care, do it your own way. Interrogate her after she has covered all seven and we will reserve our ruling on it.

Judge Ryan: Did you, Professor Silva, prepare each one of these exhibits?

The Witness: If they are from the affidavit, I did.

Judge Ryan: Show them to the witness.

Judge Waterman: May I interject at this point? You say on table 1, the citizen census population of New York, you obtained from the Department of Justice?

The Witness: The Bureau of Census in the Department of Commerce, yes.

Judge Waterman: I believe he said the Department of Justice.

The Witness: I am sorry.

Q. With respect to Plaintiffs' Exhibit 2—

Judge Ryan: I thought I had asked the witness a question.

Q. There is a pending question from Judge Ryan, and that is with respect to all of these exhibits, did you personally prepare them and did you personally prepare them on the basis of census figures and other official Government [fol. 392] publications?

A. I did not look at them now. If they were from my affidavit, yes.

Judge Ryan: You put the next question, and not in the way I would have posed it.

Mr. Sand: Then it was inadvertent, your Honor.

A. Yes, sir, I prepared them all.

Judge Ryan: Did you gather the information and figures set forth on these charts from the sources which you have indicated on each chart?

The Witness: Yes, sir.

Judge Ryan: And are these figures true and accurately reported as being the figures that you obtained from these sources?

The Witness: Yes, sir.

Judge Ryan: You say then that these are true, fair and accurate—

The Witness: Yes, sir.

Judge Ryan: —representations and collations of information you have obtained from the sources indicated on each particular exhibit?

The Witness: Yes, sir.

[fol. 393] Mr. Sand: I offer Plaintiffs' Exhibits 1 through 7 for identification in evidence.

Mr. Galt: I object to their admission in evidence as containing among other things theories of apportionment, the witness's theories of apportionment as well as a recital of accurate statistics.

Judge Waterman: She has not testified to any theories of apportionment.

Mr. Galt: But implicit in these tables are theories of mathematical analysis.

Judge Levet: Where is that? Perhaps you can elicit that.

Judge Ryan: I move to overrule the objection and receive the exhibit as a mathematical aid to the Court and for that purpose only.

Judge Waterman: Did you wish to interrogate her at all?

Mr. Galt: If I can understand what the form of procedure will be, perhaps I could go ahead.

Judge Waterman: This is the simplest of all forms of procedure. You have a witness on the stand. The counsel who put the witness on has offered the exhibits. You have a right to question the witness on the capacity and validity [fol. 394] of this material and all that sort of thing, if you wish. If you don't wish, we will rule. It could not be a simpler trial situation, although this is not in a trial court.

Mr. Galt: I appreciate that. The only thing I had in mind is whether there would be further oral testimony on these, and then all the cross-examination could be done at one time instead of piecemeal.

Judge Waterman: All right. We will admit the documents marked for identification 1 through 7 subject to a later cross-examination, if you wish to do so.

Judge Ryan: May it be understood that we have received them in evidence solely as a guide to the Court.

(Plaintiffs' Exhibits 1 through 7 for identification received in evidence.)

Mr. Sand: With a view that they might be of maximum aid to the Court, I will proceed with the examination of Professor Silva.

Judge Ryan: I don't think we need that.

Mr. Sand: I ask for a clarifying ruling from the Court. My learned brother has indicated—

[fol. 395] Judge Waterman: You are both trying to look into each other's mind and into the mind of the witness. Why don't you go ahead with what you think you want to do. I may stop you, Judge Ryan may stop you, Judge Levet may stop you, Mr. Galt may stop you, even the City of New York may stop you.

By Mr. Sand:

Q. Professor Silva, with respect to Exhibit 1, will you tell us—

Mr. Libenson: May I have a copy of the exhibit?

Judge Waterman: I am sorry, Westchester County may even stop you.

Mr. Sand: For the convenience of all counsel, may I state that Plaintiffs' Exhibit 1 is table 1 of the affidavit of Professor Silva.

Judge Levet: We are not concerned with the affidavit. It is in evidence now. Get on with your examination.

Q. Table 1 is headed "Senate Seat Remainders In All Counties Having Three Or More Ratio." What is a Senate seat remainder?

A. That is the number of inhabitants for which a Senate seat was not apportioned in the county. For example, if [fol. 396] 324,000 is the ratio, it means that 707,547 is the number of inhabitants over and above the ratio used for the apportionment of Senators. These are persons for whom Senate seats were not apportioned.

Q. Does Table 1 indicate the extent to which there were remainders for Senators which were not apportioned for all of the apportionments from 1892 to date?

Mr. Galt: I object to that.

Judge Waterman: Sustained. It is all in the statute.

Judge Ryan: And the exhibit speaks for itself.

Q. I show you what has been marked Plaintiffs' Exhibit 2 in evidence and I ask you what the significance of that table is?

A. This simply indicates the number of persons required for a Senate seat in the three or more ratio counties, and the number of persons required for a Senate seat in all the other counties. It indicates the average for the State and the ratio. The differentials between these numbers has been growing.

Mr. Galt. I ask that the last sentence of the answer be [fol. 397] stricken. The exhibit will speak for itself. I ask that the witness be restrained from making that kind of comment.

Judge Waterman: The last statement will be stricken. The exhibit speaks for itself.

Mr. Sand: Plaintiffs' Exhibit 3 in evidence, I believe counsel has that.

Q. Professor Silva, with respect to Plaintiffs' Exhibits 1 through 7 in evidence, were these charts and tables prepared by you in accordance with the accepted standards of your profession and do they fairly and accurately represent a statistical analysis of the apportionment of New York State?

Mr. Galt: I object to that. There has been no testimony here as to any standards used by the profession, or otherwise.

Judge Waterman: Rephrase your question by saying standards in your profession as you understand them to be.

Q. As so rephrased, I repeat the question to you.
A. Yes.

Mr. Sand: I have no further questions of this witness.
[fol. 398] Judge Waterman: Now, Mr. Galt, do you wish to cross-examine the witness?
Mr. Galt: Yes.
Judge Waterman: We understand there is an underlying objection to the introduction of these documents.

Cross examination.

By Mr. Galt:

Q. Professor Silva, I would like to refer first to Exhibit 1, Table 1, a copy of which you have before you. As I recall your testimony a moment ago, you stated, did you not, or let me put it this way, when you say that Table 1 shows that there are people for whom Senate seats have not been apportioned, what do you mean by that?
A. I mean, sir, take the present apportionment, for example, 285,609, that was the constitutional ratio for apportioning Senators. So that you give one Senator to each county, to each of the three ratio counties for every 284,069 inhabitants, but they cannot receive Senators after three, they could receive a fourth or fifth Senator without having a full ratio.
Q. I asked you what you meant by people who are not represented, for whom there is no apportionment.
A. I am trying to answer the question, sir. This means [fol. 399] that these are the people over and above full ratios in the counties.
Q. You understand that everyone in the county is represented by a Senator regardless of the ratio figures, that Senator X representing District X is the Senator for all the people in that county.

Mr. Sand: This is exactly the type of testimony the Court has excluded.

Judge Waterman: The Court is fully conscious of the differences of position. If the cross-examiner wants to bring out something which is part of the plaintiffs' case, he is stuck with it.

A. 435,000 people in the City of New York who live outside any Senate district are not entitled to vote in any Senate district. The point is these were people who were not counted in the actual apportioning of Senators because they constituted a fraction of a ratio. When you get into three or more ratio counties, fractional ratios do not count.

Q. With regard to Table 1 again, and this may apply to some of the others, but at the moment let us stick to Table 1, the six counties you have there are not inclusive of Suffolk County, right?

A. Because Suffolk is not a three-ratio county.

[fol. 400] Q. Please answer the question.

A. That's correct, it does not include Suffolk.

Q. You have a county here, Erie County, which is not represented directly by one of the plaintiffs in this case, is that correct?

A. All three-ratio counties.

Q. Suffolk will get three Senators, will it not, under the 1960 apportionment without being a full-ratio county?

A. It gets it on the basis of the second ratio.

Q. I am asking you if they will get it.

A. I believe so. I will have to look at the tables. I believe they will.

Q. You don't know whether Suffolk will get one?

A. I don't carry numbers in my mind. I am sure it is on the table, I believe Suffolk will. There are a lot of numbers to remember.

Q. That is quite true.

Judge Levet: We will take judicial notice of that.

Judge Waterman: The Court is perfectly willing to let the witness have copies of the seven tables.

Q. Have you got copies of the tables?

[fol. 401] A. I have one and two, but they do not show Suffolk.

Mr. Sand: To facilitate matters, and to refresh the witness's recollection, may I ask that she be permitted to have before her copies of the different exhibits.

Judge Waterman: We are willing that she should.

Mr. Galt: I apologize for the confusion and delay, it is a little difficult to single out these exhibits.

Judge Waterman: We are doing this at your request, Mr. Galt.

Mr. Galt: I appreciate that, your Honor.

A. I have Exhibits 1 and 2. You asked me about Suffolk, and Suffolk is not on 1 and 2.

Q. I suggest that you not volunteer any information. I did not ask that. I merely asked if Suffolk were excluded?

A. Yes, sir, it is.

Judge Waterman: I think you probably have been a witness before.

The Witness: No, sir.

[fol. 402] Judge Waterman: You are now being cross-examined. You are being asked leading questions. If they can be answered yes or no, it is your duty to answer them yes or no, and not to add comments of your own.

A. Suffolk is entitled to three Senators after the new apportionment.

Judge Levet: Now we have that settled.

Q. Take Table 7, Professor Silva, you have that before you. Anywhere in that table is there any reference made to the County of Richmond?

Judge Levet: What exhibit?

A. No, sir.

Mr. Galt: Table 7, your Honor.

Judge Waterman: Exhibit 7, Table 10.

Judge Levet: Exhibit 7 is Table 10.

Judge Waterman: For clarification, Mr. Sand, I don't think there is any problem about this, the document that has been admitted in evidence, subject to possible exclusion, numbered 2, has on it Table 2. No. 3 has on it Table 3. No. 4 has on it Table 4. No. 5, however, has a chart, a per-

centage chart. No. 6 has a table numbered 8. No. 7 has a table numbered 10.

[fol. 403] Mr. Galt: I apologize to your Honors.

Mr. Sand: For the clarification of the Court and the numbering system, the table numbers which are missing from the exhibits are material contained in the stipulation.

[fol. 404]

STIPULATION THAT CERTAIN DATA IS ACCURATE AND IS PROPERLY BEFORE THE COURT ORDERED FILED

Judge Waterman: I might just as well state at this point that the stipulation is ordered filed and made part of the trial record. It was entered into this morning and was signed by all counsel of record here.

Mr. Galt: I take it that there is no objection to questioning as to th m.

Judge Waterman: No.

Mr. Galt: But at present I will withdraw that. I will assume that it is one of the exhibits.

Judge Levet: You may examine on the stipulation if you want to.

Judge Ryan: He doesn't want to examine on that.

You have no further questions, have you?

Mr. Galt: Yes, your Honor. I would like to examine Professor Silva at some length, if I may.

Judge Ryan: All right.

By Mr. Galt:

Q. In your tabular presentations and in your writings on New York apportionment, you referred to the Fordham Law Review and material of that sort. Have you used the term "equitable representation" or "equal representation"? [fol. 405] A. Yes, sir, I have.

Q. Would you tell us exactly what you mean by those terms?

A. That one man equals one vote, that a popular vote cast for a State Senator in any one county has equal weight with one popular vote cast in any other county.

Q. There are other theories of equal representation

known to the science of political science, well recognized ones?

A. Not that I know of. Historically there have been other theories. But I do not believe political science accepts other theories.

Q. Other theories than the theory of one man, one vote?

A. Yes.

Q. I take it that all these charts and statistics that you have presented here, and all these references you have made in your writings in the Fordham Law Review and elsewhere to the apportionment system of New York are valid only to the extent that the doctrine of equal representation, which you have just explained, is valid?

A. I would assume so, sir.

Q. That doctrine is based fundamentally on what con- [fol. 406] cepts? Let us take particular areas.

Judge Levet: I did not quite hear what you are referring to.

Mr. Galt: The doctrine of equal representation.

Judge Levet: I am sorry. I thought you said "document."

Q. The doctrine of equal representation, what concepts are they based on fundamentally?

Judge Waterman: She has testified to that already. She means one man, one vote.

Q. But I want to know where in the Constitutional concept, where in the cases in the Constitution of New York State—

Judge Waterman: That is a matter of argument. We will take briefs on that if you not have already briefed it.

Mr. Galt: I only want to find out whether the witness suggests that she has any source for this theory of hers according to the concept in one field, for instance, of the Constitution.

A. I had assumed, and I think my profession generally assumes, that the ideal is one man, one vote; that this is a basic premise of democracy.

[fol. 407] Q. You assume that that is a basic premise of democracy?

A. I know the literature, the apportionment literature assumes this.

Judge Waterman: It seems to me that we are getting—I fully appreciate that you will never get any objections from anybody—but the Court has got to step in and say we laid down guide lines here, and your cross-examination under any theory of trial is yours. I think that we ought to stay somewhere within the Court's own theory of guide lines here.

Mr. Galt: If your Honor please, I appreciate that fully, and I don't intend to abuse any privilege which this Court accords me.

I do want to say that the statistics themselves have behind them a certain theory of Dr. Silva's views, and this is what the questioning is addressed to.

Judge Waterman: Without peradventure of a doubt, the Court fully appreciates that, fully appreciates that Dr. Silva's statistics, accurate though they may be, were drawn up with an idea in mind to show certain things, and that has already been proved, and she cheerfully admits it.

Isn't that so?

[fol. 408] The Witness: Yes.

By Mr. Galt:

Q. You have read the complaint in this action, I take it, Dr. Silva?

A. Yes.

Q. There is an allegation in there to the effect that the theory you espouse is the theory on which governments of Anglo-Saxon jurisdiction proceed in their apportionments. The complaint says that the New York system is contrary to the theory of Anglo-Saxon philosophy and government. Isn't that so?

A. I have read the complaint, but I don't recall whether it says so or not. If you say so, I will concur.

Q. If that statement is in the complaint, and we can get a copy of it and show it to you—

Judge Waterman: Again, though I do not wish to stop you, this is a conclusory allegation.

Mr. Galt: Yes, it is. Not only conclusory—

Judge Waterman: We are conscious of that, Mr. Galt.

Q. Let me ask you this. I will skip that in view of what the Court has said in the interests of saving time.

Let me ask you this: Is the legislative representation as embodied in the United States Constitution for the [fol. 409] United States Legislature, the House of Representatives and the Senate, founded on the doctrine of equality as you mentioned it?

A. In the House of Representatives, it is; in the Senate, it is not.

Judge Levet: I would think that the Court would be able to take judicial notice of that without proof.

Mr. Galt: Of course, your Honor, but I am only asking Professor Silva to say whether she believes her theory is embodied there.

Judge Levet: I don't know how we are concerned with that.

Mr. Galt: I think the relevance will appear in a minute.

Q. In the House of Representatives you say that it is founded—

Judge Waterman: No state may be deprived of two senators in the Congress without its own consent, which practically makes the Constitution unamendable in that particular. We are conscious of some of these things.

Mr. Galt: It is not for the enlightenment of the Court in that sense, because I am well aware that the Court knows [fol. 410] these things; but I am interested in the application of Dr. Silva's theory, if there is any, to things that are so familiar to the Court and to the public. I wanted to ask Dr. Silva whether or not she agrees that in the House of Representatives every State in the Union has a Congressman regardless of its population.

Q. Is that correct?

A. That is correct.

Q. May I ask you this, Dr. Silva: Are you familiar with the City Charter which was recently adopted?

A. I have not studied it. I have read portions of newspaper accounts, yes.

Q. You know that the City Council is apportioned according to the counties of New York—Kings, New York, et cetera—

A. I haven't studied the apportionment and I am not prepared to answer.

Q. You don't know?

Mr. Sand: I think in fairness to the witness she has answered the question.

Judge Waterman: I think she has, too.

Q. If I were to tell you that the County of Richmond has a number of representatives on the City Council which, in comparison to the County of New York, has nothing to [fol. 411] do with population, would you say that that system of apportionment is vulnerable under your theory?

A. I would have to study the provision.

Judge Waterman: We will exclude that. It is immaterial and irrelevant.

Q. Dr. Silva, let me ask you this: Under your theory, as you have been expounding it, would you say that a variation of one or two per cent between the population of a class of county and its representation is inequitable or invalid under your theory?

A. I don't think this is normally a measure that is used. The measure that you suggest is not the measure that is used in apportionment literature for measuring how satisfactory an apportionment is. So I am unprepared to answer. You are suggesting a measure that is not applicable. I am not prepared to answer yes or no. In certain cases it would, and in certain cases it would not.

Q. Under your theory, at what point of variation would a system of apportionment become equitable or inequitable?

A. I would accept one of the two standard measurements for measuring the satisfactoriliness of an apportionment.

[fol. 412] Q. Under your theory?

A. Yes.

Q. I don't think that you have understood the question. At what point—

A. Unless you are prepared to let me explain the measures of equity and apportionment, I cannot answer.

Mr. Sand: I ask that the witness be permitted to answer.

Judge Waterman: You say that there are two standards?

The Witness: Yes.

Judge Waterman: Then the cross-examiner quite properly says there are among political scientists two recognized theories?

The Witness: They generally recognize statistical measures.

Judge Waterman: Is that what you are trying to tell us? Whether or not that comes within the guide lines laid down by this Court in the beginning, I am interested. What are you trying to tell us?

The Witness: There are two usual measures. One is that you measure the number of citizen inhabitants per assemblyman in each unit or each legislator, assemblyman, senator, congressman, or whatever it might be, to each unit [fol. 413] to which you apportion. You compute the first measure simply by dividing a number of citizen inhabitants in this unit by the number of legislators apportioned to that unit.

The other: you just reverse the thing the other way. An apportionment is mathematically satisfactory when you cannot reduce any more, you cannot reduce or equalize any more the differential between any given county and any other county by transferring a legislator from one to the other.

Judge Waterman: Now you are getting into the theory of equalization which you say you believe in?

The Witness: Correct.

Judge Waterman: I think I have separated the factual from the theoretical in my own mind. I warn you and I warn your counsel that when we get around to deciding the case we are going to decide it according to our own guide lines as we have drawn them.

By Mr. Galt:

Q. You studied, did you not, the representation you have in your tables, the representation in 1894 following the Constitutional Convention and the enactment of the constitutional provisions now in the State of New York.

[fol. 414] Now, at that time, there were two big counties, were there not, New York and Kings?

A. Yes, sir.

Q. These were two big counties?

A. Yes, sir.

Q. Do you know what the variation was between population and representation?

A. I believe it is in one of these tables which I do not have before me.

Judge Waterman: If it is, we will find it there. Move on to something else.

Q. Dr. Silva, let us again refer to the allegations of the complaint. The complaint alleges, does it not, a grossly unfair weighting of both houses of the New York Legislature against what is referred to in paragraph 12 of the complaint as the densely populated urban centers of the State, is that correct?

A. Yes, sir.

Q. To your knowledge does the term "urban" or "urban center" have a specialized technical meaning applied to it by the United States Census to designate densely populated sections?

A. The United States Census uses several terms. They used the term "urban." It was redefined after 1950. They [fol. 415] used the term "urban" generally to mean any incorporated place having more than 2500 inhabitants. They also used the term "metropolitan area"—

Q. I was not asking about that.

A. 2500 is the dividing point under the definition of the Bureau of Census.

Q. You know that the United States Census characterizes the counties in New York by a percentage of urbanization?

A. Correct.

Q. What percentage of urbanization would you say renders a county or counties a densely populated urban center?

A. I would accept the definition made by the Bureau of Census for what they call the central city.

Q. What is that? What percentage is that?

A. I don't believe they use a percentage. They do not define it in terms of a percentage.

Q. What percentage would you use to characterize it?

A. I wouldn't. I would accept the Department of Commerce classification. I would not undertake, myself, to make a classification. In all cases I think I have used either constitutional or census classifications. I would decline [fol. 416] to do that.

Q. Let me understand that, Dr. Silva. In most of these charts which we have in evidence as covered by the stipulation, you generally refer to six counties.

A. Yes, sir.

Q. Of six counties that we mentioned before, five of them having representatives in the form of plaintiffs in this case and one of them, Erie County, not directly represented by a plaintiff in this case; is that correct?

A. Yes.

Q. Is there any question in your mind that these are heavily urbanized counties?

A. Certainly the first four are heavily urbanized—Bronx, Kings, New York and Queens. Portions of Erie are. Nassau would not fall under the central city classification of the Bureau of Census.

Q. I did not ask you that. You consider Nassau heavily urbanized?

A. I am not prepared to answer the question unless I can define my term.

Q. How about Erie?

A. I am not prepared to answer that question unless I can define my term.

Judge Ryan: Where did you say you went to college? [fol. 417] Fordham University?

The Witness: University of Michigan.

Q. These difficulties you are having with the determining of what are urban counties in the State of New York and

whether, even, some of these six you classify under that category: I want to know, Doctor, if you think that these are the only six—and now it develops four—urbanized counties in the State of New York?

A. Let me define my terms and I will answer your questions.

Q. I think the meaning of this term is clear enough. If we were to characterize the urbanized counties of the State, would we not have to include more than even the six counties you show here on your chart?

A. It depends on how you define "urban."

Q. How would you define "urban"?

A. I would use the classifications of the Bureau of Census, and they use three or four.

Q. How did the Bureau of Census classify them?

A. They used three or four classifications.

Q. What are the three or four, if we have to pursue that?

Mr. Sand: You don't have to pursue it.

Mr. Galt: I think that interruption was unnecessary. If [fol. 418] you want to make an objection, go ahead.

Mr. Sand: I object to the manner in which the cross-examination of the witness is being conducted. I think that the witness should be permitted to answer the questions fully and fairly.

Judge Waterman: This last question gives her carte blanche. He asked her what her terminology meant.

Mr. Galt: I am interested in the fact that the plaintiffs' own witness is not able to determine what an urban county is in the State of New York.

A. My six counties here are not classified on the basis of the census. I have selected these counties because the Constitution designates three ratio counties.

Q. I am not interested in the ratio now.

A. This is how I picked these.

Q. The complaint talks about urban counties and discrimination, alleged invidious discrimination against urbanized counties. I want to know whether you consider these the only urbanized counties in the State of New York.

A. No, sir, I do not.

Q. What else do you consider urban counties?

A. This is where I must define my terms.

[fol. 419] Q. I am asking you what the other urbanized counties are, in your opinion.

Judge Waterman: Frankly, I am not interested. We all know Monroe County is probably the most urbanized. Has the least representation. I don't see anybody here from Rochester. We are all acquainted with Syracuse and problems. Who cares? Do you care?

The Witness: I am prepared to answer the question if I can define what is meant by "urban," in which there are three or four different types of classification. I am not prepared to answer yes or no or just list counties without defining my terms.

Judge Waterman: Don't you see that what you are talking about are things which this Court is supposed, whether it does or not, to know, and which the Supreme Court of the United States has frequently said, because we are judges in New York, though they are much superior to us in wisdom, they realize that we should have a better knowledge of matters here in New York. So we are resting on the Supreme Court.

Mr. Galt: I want to make it perfectly clear that it was not the Court's knowledge of urbanized that I wanted to get but Professor Silva's knowledge for use in her tables, to show what the table situation really amounts to.

[fol. 420]. By Mr. Galt:

Q. The counties that were mentioned by Judge Waterman, that will give you at least ten in the urbanized bracket, would it not?

A. I don't know how others define "urban." I have used the counties designated by the Constitution. If you use the Bureau of Census classification of urban, you are going to get more than ten. If you are going to use the Bureau of Census classification for standard metropolitan area, you are going to have six, but not these six; six standard metropolitan areas.

[fol. 421] Q. All right. Bronx, Erie, Kings, Monroe, Nassau, New York, Onondaga, Queens, Suffolk, Westchester.

Mr. Galt: Ten taken from a table which I believe is covered by the matters which we have stipulated to.

Judge Waterman: Out of that detail I can pick out two, not five.

Q. (Continuing) But taking these ten in your table—not only a big six, there is a big ten right in your table—if we add Richmond to that list of ten, Richmond being in the City of New York, do you know how many seats they would have in the Senate?

A. I would be able to certainly do the addition if I had the figures.

Q. All right. Do you have what was originally was your table 13?

A. I don't have it.

Q. All right. We will give you this here.

A. Yes, sir. These are Assembly districts I believe. 14—there are 14 counties that belong here according to the constitutional classification. Four have been eliminated. This is not my table. There should be fourteen.

Q. It is not your table?

[fol. 422] A. No, sir.

Q. All right. I certainly don't want to—

Judge Levet: What is this you are showing her?

Mr. Galt: It is marked table 13, part of the stipulated facts.

The Witness: There should be 14 counties in that last one.

Q. You have a list of 14 counties also—that is true—but I think this is your list as well. However, I don't want to present it to you as your list unless I am certain that it is, Dr. Silva.

Mr. Sand: May I clarify the situation here. Certain tables prepared by Dr. Silva were partially contained in the stipulation and otherwise have not been introduced in evidence. If Mr. Galt would like me to indicate where the full table is, I have that information.

Table 13—the substance, a portion of table 13 is contained in VII of the stipulation which has been filed.

Mr. Galt: Those 10 counties are already stipulated to, if your Honor please, the ones I read before.

[fol. 423] Q. If we were to characterize the urbanized areas of the state against the so-called rural areas, wouldn't we have to use more than the six counties to which you have been referring?

A. "Urban" is not a term I am using. I am using the counties as defined by the Constitution for Senate apportionment. There are six. I have used the counties that are defined by the constitution for Assembly apportionment. There are 14. "Urban" and "non-urban" is not my term. It is not a term here that I am ready to define over and above the way the Bureau of Census defines it.

Q. But in your table you haven't had any regard then to this theory of urbanization as propounded in the plaintiffs' complaint?

A. Well, I think the tables speak for themselves. They do—it so happens—it so happens that the counties that the Constitution provides different apportionment rules for happen to be urban counties, but the Constitution doesn't define them as urban counties. It describes them in terms of their population, not population density; by the terms of the proportion of the state's total citizen population that they contain, and that they have used the constitutional [fol. 424] definition.

Q. The point is this, Dr. Silva: If we used the ten counties or the fourteen counties to which you have referred, wouldn't that change the averages and ratios in your tables?

A. No, sir. If you—well, now, let me answer that. If you are going to add to the six Senate classification, which is a constitutional classification, these are the six counties which the ratio must be higher for to apportion. If you are going to add to this some other urban counties, where the ratio is different, where the ratio is lower to this, it would change the view. This is the constitutional—

Q. It would change. I didn't ask you about the ratio. But if you add the counties, it would change this?

A. Well, if you add one or all of the counties, it would change it arithmetically.

Judge Levet: Obviously if you add them it would change on table 1 the apportionment figures you have for the state; isn't that right?

The Witness: Probably so.

Judge Levet: Well, there is no doubt about it?

[fol. 425] The Witness: I assume it would change it. I have not computed it.

Q. Dr. Silva, if we take the 10 counties, do you know how many seats out of a 57-member Senate they would have, out of the 1960 apportionment?

A. I don't carry these numbers in my head. I am sure—

Q. According to your calculation, would they be 37 out of 57?

A. I would have to add them, sir. If you give me the table, I will add them.

Q. All right. Add them from any tables you want, any papers you have, and if you lack anything I can supply, I will be glad to supply it.

A. Which 10? I have 14 here.

Q. On table 7 of our stipulation. I don't know if it's the same one as this. Will you look this over, Dr. Silva.

A. Yes, sir.

Q. This is part of the stipulated facts. How many Senators would they have out of the 57?

A. 37 out of the 57.

Q. What about their numbers out of the 150 Assembly seats?

[fol. 426] A. Well, that is something of a matter of addition.

Q. We will wait for you to add it.

Mr. Sand: I object to this, your Honor. This is unreasonable and unfair.

Judge Ryan: I think it was Cicero who said something about abusing patience in his orations.

Mr. Galt: Very well, your Honor. I will take the hint.

Judge Ryan: I think this is all immaterial, in my view. That is not directed as a personal observation, you understand.

Mr. Galt: I understand that, your Honor. I will do my best to adhere to the procedures that the Court wishes.

Judge Ryan: I would take it that way. You can do it any way you please.

Mr. Galt: Under those circumstances, if your Honor please, no further questions.

Judge Waterman: Thank you, Mr. Galt.

Does anyone else wish to examine?

By Mr. Null:

Q. Dr. Silva, with respect to Plaintiffs' Exhibit 1 in evidence, the table—

[fol. 427] A. Table 1.

Judge Levet: Exhibit 1, table 1.

Q. Table 1, yes. The question that Judge Levet put to you about the total figures, if all of these counties were added in, would the final figure of constitutional ratio for apportionment of Senators be different? I believe your answer was that it might be different.

A. The ratio won't be different. The ratio is computed by dividing the state's total citizen population by 50. I understood him to ask me whether the remainders might be different, whether there might not be some remainders in other counties that are not shown here. The numbers, the total at the top might be different if you added some other counties. Where it says "Remainder of State", that line might change if we added other counties. No other number on there would.

Q. Calling your attention, Dr. Silva, to Plaintiffs' Exhibit 3, table 3—

A. I don't have it, sir.

Mr. Null: If I may, with the Court's permission, give her my copy. This is table 3, Plaintiffs' Exhibit 3.

Q. You refer there to the largest senatorial districts [fol. 428] by population.

A. Yes, sir.

Q. What county is that?

A. It's now The Bronx.

Q. And in your table what was it in 1960?

A. I think it's Bronx under the present apportionment. The next apportionment will be Nassau. I don't know if it said, but I know it is Nassau.

Judge Levet: What is the answer?

The Witness: It is now The Bronx and under the next apportionment it would be Nassau.

Q. What is the present population of the senatorial district to be in Nassau County?

A. The average population would be 425,267.

Q. And what would the population of the smallest district be?

Judge Levet: In the state?

Mr. Null: Yes, sir.

A. There you can't be certain, because it involves some legislative discretion. If the smallest senatorial district is the Essex-Saratoga district, it is 166,715.

Mr. Galt: I object. If there is no way of ascertaining it, the answer cannot be given.

Judge Levet: She qualified her answer.

[fol. 429] Q. Calling your attention to the stipulation, stipulation IV, Dr. Silva, which I showed you—

A. Yes, sir.

Q. —in order to phrase my questions properly—

A. Yes, sir.

Q. According to that table, how many state senators will Monroe County have, according to your count?

A. It will have three.

Q. And the population of Monroe County?

A. 571,027.

Q. And Nassau County has how many senators?

A. Nassau will have three.

Q. With a population of how much?

A. 1,275,801.

Mr. Null: Thank you, Dr. Silva.

Mr. Sand, which exhibit has the assembly districts?

Mr. Sand: Stipulation VI and stipulation VII.

Q. Dr. Silva,—

A. Yes, sir.

Q. Will you please examine stipulations VI, VII and VIII.

A. Yes, sir.

Q. With regard to telling the Court which is the assembly [fol. 430] district with the smallest population.

Mr. Galt: It is shown in the stipulated facts.

Judge Levet: Isn't it shown there?

A. Sir, I don't believe the smallest assembly district is here. It's in VIII. Schuyler County has the smallest.

Judge Waterman: Sir, I never had the slightest thought that you were interrogating the witness on these specifics. Aren't you getting into matters that are so clear and obvious from the exhibits in the case that all you are asking her to do is have her words say something which is already in front of us?

Mr. Null: My understanding was to bring it down to the county level as to why Nassau is so perturbed—

Judge Ryan: I could make a speech about The Bronx. I have been living in The Bronx all my life, and I could talk about our being discriminated against. It is a question of whether or not this Court has the power to correct it. We know these things exist. The question is have we the right as a federal court to correct this, to upset this? That is a matter of the state, for the voters.

Mr. Null: I do not wish to prolong it. I will cease my [fol. 431] cross-examination.

Judge Waterman: Does the City desire to cross-examine?

Mr. Offner: I just want to clarify something.

By Mr. Offner:

Q. Mrs. Silva, I am referring to table 1, Exhibit 1. Did you say it is possible for the figure at the extreme right on the bottom, "Remainder of State", the figure of 366,553, to be changed?

A. It might or it might not. If you added counties in addition to Erie and Nassau. But then you would be including counties that are not in the three-ratio.

Q. And your table is "Senate Seat Remainders in All Counties Having Three or More Full Ratios"?

A. That's right. You can't change it without changing the title of the table.

Q. But confining it to the counties that have three or more full ratios, each of the figures is correct?

A. You can't change it.

Q. Unless you include counties not included in the three or more ratio?

A. Yes.

[fol. 432] Judge Waterman: Westchester?

Mr. Libenson: No examination.

Judge Waterman: Redirect?

Mr. Sand: No redirect.

Judge Waterman: Fine.

Did you want to interrogate her after these others?

Mr. Galt: No, your Honor.

(Witness excused.)

PLAINTIFFS REST

Mr. Sand: If the Court please, under your Honor's rulings with respect to the testimony which is to be excluded, the plaintiffs have no further testimony and rest their case.

Judge Waterman: Before you rest, I want to state for the record that we have already admitted exhibits 1 through 7 subject to a possible reversal after cross-examination. The admission of the exhibits stands.

All right.

Now you rest?

Mr. Sand: Yes, sir.

DEFENDANTS REST

Judge Waterman: The City?

Mr. Offner: I had the comptroller here to testify, but [fol. 433] I understand your Honor has rejected the offer of proof, so we have no other witnesses.

Judge Waterman: That is right.

Nassau?

Mr. Null: Nassau rests.

Judge Waterman: What position Suffolk is in I am not sure.

Mr. Corwin: We are associating ourselves with the state.

Judge Waterman: With the state. All right.

Does the state have any witnesses?

Mr. Galt: Your Honor, I was going to suggest at this point, they having rested, we would in all probability be permitted to make the usual motions.

Judge Waterman: That is right.

Mr. Galt: And in this case it would be no pro forma procedure.

Judge Waterman: Yes.

Mr. Galt: So because of the certain unexpected developments with reference to some of my witnesses, anyway, I would have to check with them, so may I respectfully suggest that the motions be argued immediately after the recess. Unless the Court has other views, I would suggest [fol. 434] that that might best fit the pattern.

Judge Waterman: In accordance with the procedures people are so well acquainted with that occur in every Perry Mason show, we will now take a recess, and we will resume at 2 o'clock.

(At 12:30 p.m. a recess was taken to 2 o'clock p.m.)

[fol. 435] Afternoon Session

Colloquy Between Court and Mr. Galt

Judge Waterman: Now you have several motions, actually, don't you, Mr. Galt?

Mr. Galt: At least one, at the end of the case.

Judge Waterman: All right.

Mr. Galt: First of all, your Honor, I understand that the affidavits were marked merely as exhibits. They are not in evidence.

Judge Ryan: Marked for identification.

Mr. Galt: Marked as exhibits for identification only, and therefore there is no necessity, I assume, to renew—

Judge Levet: The affidavits, you are speaking of?

Mr. Galt: Yes, the two affidavits.

Judge Levet: I understand.

Mr. Galt: They are not, as I understand it, part of the record.

Judge Levet: That is right.

Mr. Galt: And in arguing our motion to dismiss, we can so assume.

Judge Levet: Yes.

[fol. 436] Mr. Galt: Now, if it please the Court, in view of the rulings which were made here this morning, we have taken a different slant as to the presentation of our case.

As I understand it, your Honors have ruled explicitly that no opinion testimony was being accepted by the Court.

Judge Waterman: Yes.

Mr. Galt: And our understanding of what the plaintiffs had intended to prove and what the defendants, City Council, et cetera, had intended to establish would have encompassed the meeting of opinion testimony by opinion testimony through our own experts.

Accordingly we had been ready to proceed with Professor Alfred de Grazia, who is here, who is an expert in the field of political science and apportionment, who would have testified to his conception of the historical—or, actually, to the historical and rational basis of New York apportionment and what factors should be adduced and taken into consideration to ensure the proper diffusion of political strength.

We had intended to develop, through expert witnesses like Professor Spencer Parrit, Dr. Michael O. Sawyer and Dr. Hollister Kent, the whole aura of county development [fol. 437] in this State, the importance of counties as units of government and administration and as communities of interest, their liaison to the State Legislature and such things as the matters which must be—

Judge Waterman: We will accept your statement, General Galt, prima facie, that these gentlemen would have been of some assistance to your case. If you wish to file an additional brief to any brief that you have presently filed, it will have to be done pretty shortly.

Mr. Galt: Yes.

Judge Waterman: We are neither interested in what you might have done or interested in what you could have done. Do you have any evidence that you intend to put in on the issues as we have pitched them?

The answer is no, so you have a motion to dismiss, and you want to argue it, is that right?

Mr. Galt: That is correct, your Honor.

[fol. 438] Judge Levet: I take it that there is no testimony that the State is going to put in?

Mr. Galt: In view of the Court's ruling this morning, we feel—

Judge Levet: No matter why it is, is it so?

Mr. Galt: It is so, your Honor.

Judge Levet: All right.

Judge Waterman: Now you want to argue one motion to dismiss the entire complaint, not the motion to dismiss WMCA separately but the entire proceeding?

Mr. Galt: That is correct.

Judge Waterman: I wonder if we just cannot take that as a motion and reserve judgment on it and proceed with argument, which will give you a better chance, as a matter of fact, because it will permit the plaintiff to argue first.

Mr. Galt: Very well.

Judge Waterman: You asked for an hour, is that right?

Mr. Sand: Right.

Judge Waterman: I don't think anything has transpired that will require you to ask for more time.

Mr. Sand: No. I will make every endeavor to conclude in an hour.

[fol. 439] Judge Waterman: All right.

Argument on Motion to Dismiss the Entire Complaint by Mr. Sand

Mr. Sand: May it please the Court, this case is now before this tribunal for resolution of the issues on the merits, freed from any doubts which this Court may have entertained as to questions of justiciability standing or the applicability of the Fourteenth Amendment.

Plaintiffs of course have the burden of proof, as must any plaintiff who challenges the constitutionality of State law. Plaintiffs have the burden of proving that there is invidious discrimination. We submit that we have met that burden.

Clearly, the Supreme Court of the United States in Baker v. Carr and in its remand of the Michigan case and

of this case intended invidious discrimination, the standard to be applied here to be a meaningful standard and a standard which it was possible for plaintiffs to meet.

First, of course, we look to the numbers themselves, and the Court has indicated that perhaps we look only to the numbers, and the extent to which the apportionment of both the State Senate and Assembly is disproportionate to the population of the State.

We start with a base for measuring an apportionment [fol. 440] with people, because government above all else represents people, no matter what language the experts may use, no matter what the talk may be of interests or local subdivisions, what we are talking about is to what extent the people of this State will be represented in their Legislature, and we respectfully submit to this Court that any system of apportionment which gives greater weight to the votes of citizens because they reside in one area of the State than it does to the votes of other citizens residing elsewhere contains within it an implicit value judgment that some citizens of the State are worthier of representation, having a right to the disproportionate say in the government than other people.

We respectfully submit that such a value judgment implemented by State action as it is in New York is contrary to the equal protection clause of the Fourteenth Amendment.

Thomas Jefferson said: "Equal representation is so fundamental a principle in a true republic that no prejudices can justify its violation because the prejudices themselves cannot be justified."

The issue is not whether all the people of the State are to be represented but whether some people are to be represented disproportionately to their numbers, and who is to say which people and on what basis they are to be pre- [fol. 441] ferred.

These are value judgments which the equal-production clause does not permit. There cannot be some citizens more equal than others under the Fourteenth Amendment.

If the Court please, whatever other factors may ultimately be reflected in the apportionment of one house of a bicameral legislature, there now exists an overwhelming

body of judicial and other opinion to the effect that under the equal-protection clause of the Fourteenth Amendment, at a minimum, one house of the Legislature must be proportionate to population and, of course, in New York State neither house is proportionate to population.

The Solicitor General of the United States in an address made before the Tennessee Bar Association, which is quoted in the opinion of the state court in Maryland, and your Honors have available to you the some fourteen or fifteen opinions which have been rendered by federal and state courts, since the decision in Baker v. Carr, in that speech Solicitor General Cox said that in his opinion the rule which will evolve is that one house of a legislature must be proportionate to population, and perhaps the other house need not directly based on population, pro-
[fol. 442] vided that the result of what other base is used is not too disproportionate to population.

If the Court please, the battleground between the courts and scholars on the issue of reapportionment has passed this case by because the issue which is now being bitterly fought, the issue which is involved in the Michigan case, the issue which is involved in the Maryland case, is, of course, assuming that one house must be based on population, must the other house also be based on population?

I therefore respectfully say to the Court that the overwhelming weight of authority, including decisions by three-judge federal courts faced with situations not too dissimilar from this one, supports the position of the plaintiffs.

Judge Levet: May I ask a question there?

Is there anything in Baker against Carr which substantiates your assertion?

Mr. Sand: There is nothing in the explicit opinion of Baker against Carr which would indicate how ultimately the cases were to be resolved on the merits, but there is, as every federal court which has since passed on this question has held, much in Baker against Carr which is implicit when it is acknowledged that questions of state
[fol. 443] apportionment are within the orbit of the Fourteenth Amendment, which is explicitly held to be the case by the Supreme Court; then many consequences flow, and these are the consequences which some fourteen other courts have found to exist.

What the Supreme Court did in Baker against Carr was to turn the key that unlocked the door, and there was in this country such a pent-up desire for redress from long-standing grievances from which there had been, heretofore, no redress, that with great expedition in fourteen or fifteen states, in cases commenced after Baker against Carr, the courts have granted precisely the relief sought in this case. [fol. 444] We look then first to the—

Judge Waterman: Just a minute.

Mr. Sand: Yes.

Judge Waterman: The courts have not granted any relief, as I understand any of the cases. For the most part they have deferred action, waiting for the Legislature to act, saying with a big club, "If the Legislature does not act, we will."

Mr. Sand: I accept that modification. I think in some instances the courts have gone beyond that.

Judge Waterman: Yes. In these two cases. In Wisconsin they waited for the Legislature, and the Legislature and the Governor didn't get together, so they appointed a Master, who was not supposed to report until after the legislative session. In Michigan they did that very remarkable thing which has been stayed by the Supreme Court.

Mr. Sand: Your Honors, what the courts have done is precisely what the prayer for relief in this complaint, filed fifteen months ago, asks be done, and that is that the Court declare the existing apportionment unconstitutional, regain jurisdiction of the case, set the case down [fol. 445] for a subsequent hearing, with the thought of giving the opportunity first to the Legislature to reapportion.

Judge Levet: Does that mean, Mr. Sand, that the Legislature must act and act irrespective of the State Constitution and set forth something? Even if this present system is outlawed, does it mean that the Legislature is expected to pass something which is contrary to the State Constitution?

Mr. Sand: Well, your Honor, that is an issue which has been specifically resolved in the Georgia and Maryland cases, in both of which the apportionment provisions were

contained, as in New York, in the State Constitution, and the most explicit discussion is in Maryland, where the Court has—

Judge Levet: No. I am not concerned with Maryland. Answer my question, please, as to New York.

Mr. Sand: Once the Court declares the existing constitutional provisions with respect to apportionment to be invalid, there will then be nothing contained in the State Constitution—validly contained in the State Constitution with respect to apportionment. The Legislature would therefore be free to pass a statute.

Judge Levet: That is your contention.

[fol. 446] Mr. Sand: That is my contention, and with all respect, your Honor, that is the conclusion which was reached by the Court in the Maryland case and in the Georgia case.

Judge Waterman: While we are on that point, in any of these other states was there an opportunity for the people, vote by vote, irrespective of districts, state-wide, to do anything to their Constitution within five or six years, such as they had the opportunity here in New York?

Mr. Sand: The Michigan case, your Honor, involves an apportionment of the State Senate, which was enacted by initiative and referendum in 1952. Not only is there initiative and referendum in Michigan, but the very apportionment provision itself was enacted by initiative and referendum.

In the Oklahoma case, a three-judge court noted that there was then pending an initiative petition, and the court said the question of whether or not that apportionment will violate the 14th Amendment is not a question which is resolved by a vote of the majority. Obviously, the majority cannot enact a provision which is contrary to the equal protection clause and have it sustained by of the [fol. 447] fact that a majority has set it so.

Obviously, if a State were to, by constitutional amendment, provide some provision violative of the 15th Amendment, there would be no hesitation in—

Judge Waterman: I get your point.

Mr. Sand: —in invalidating it.

The figures show, as is common knowledge in this State, that gross disparities exist, that with respect to the Assembly, the disparities are as much as fourteen to one; with respect to the Senate, the disparities are in some instances better than two to one.

Judge Ryan: Is it your position that substantial equality is a constitutional requirement?

Mr. Sand: It is my position that the Fourteenth Amendment requires that the apportionment of the State Legislature be proportionate to population and that there must be a direct and approximate relationship between the population of the State and the apportionment of the Legislature.

Judge Ryan: And this, you maintain, is so even though a set policy is evidenced by the Constitution and by the legislation implementing that Constitution—a set policy which has a rational basis?

[fol. 448] Mr. Sand: Yes, your Honor. There are—

Judge Ryan: Isn't that contrary to even what Mr. Justice Brennan said in Baker v. Carr, at page 226?

Mr. Sand: Your Honor, I—

Judge Ryan: He specifically stated that the judicial standards in the equal protection clause are well developed and familiar. It has been open to courts since the enactment of the Fourteenth Amendment to determine if on the particular facts they must that the discrimination reflects no policy but simply arbitrary and capricious action.

Mr. Sand: Your Honor, I respectfully submit the situation to be this: there are two instances; there are two types of cases in which there would be no relationship between population and apportionment. One would be the crazy-quilt, to use Judge Clark's term. Obviously, if the apportionment of the Legislature were determined by numbers pulled out of a hat, that would not be a rational policy. But in our respect it goes beyond that, because the rational policy which the State urges must be a policy which is permissible under the Fourteenth Amendment, [fol. 449] and if that rational policy be one which has implicit in it the assumption that because persons reside in a particular area of the State their vote is entitled to greater weight, that they are entitled to a greater influence

in Government than is proportionate to their numbers, that is not a rational policy permissible under the Fourteenth Amendment.

Judge Ryan: Don't you lose sight of the fact that our representatives are chosen not as representatives of an urban or of a rural district, but rather as representatives of one of the two major political parties, and that we hear —it frequently happens—of representatives of both major parties coming from districts within an urban area?

Mr. Sand: I recognize the party system in New York State.

Judge Ryan: Isn't that the system by which legislation is enacted?

Mr. Sand: And I—

Judge Ryan: —rather than by a system of choosing representatives—

Mr. Sand: I respectfully call your Honor's attention to the fact that in New York State by virtue of the mal-
[fol. 450] apportionment, the party which receives the majority of the votes does not elect the majority of the State Legislature, so that in New York State mal-apportionment brings it about that the people having a party preference in the majority are unable to implement that preference, and in this respect New York is probably the worst mal-apportioned State in the Nation, and with respect to the party system the discrimination is more invidious in this State than in any other State in the Nation.

Judge Ryan: Would you recognize that there is no longer a population with any real permanency which can be described an urban population, and that there is a constant flux and movement, not only within the State but throughout the Nation, of people who formerly lived in the city and moved out to rural areas?

Mr. Sand: I recognize it, your Honor, and rely on it, because I think that the mobility of the population indicates the arbitrariness, the irrationality in saying that where a particular citizen happens to be at a particular time is determinative of how much weight should be given to his vote in the Legislature.

I think that what your Honor has pointed out is that
[fol. 451] notions of localism, of the significance of the

political subdivisions, which developed at an earlier time in the history of this State, and at a time when there was a more uniform population dispersal throughout the State, are now anachronistic and obsolete and are preserved solely for the purpose of perpetuating a system which is discriminatory towards the persons in the class of the plaintiffs. And of course this is a class action brought on behalf of the entire class, and the fact that there is not a single plaintiff is of no significance.

Judge Waterman: Would you say the corporation is in the same class as the voters?

Mr. Sand: The allegations with respect to the corporation relates solely to the due process amendment.

Judge Levet: In respect of what?

Mr. Sand: Under the Fourteenth Amendment.

Judge Levet: What with respect to the Fourteenth Amendment?

Mr. Sand: The allegation with respect to the corporate plaintiff is that by virtue of the system of apportionment which exists in this State, residents of New York County, which is the principal place of business of the corpora- [fol. 452] tion, are denied their proportionate voice in the Legislature of the State, and as a consequence of that the Legislature has not only the power to discriminate against New York County, but in fact discriminate against New York County and causes actual economic injury to those persons resident in the county as well as to those legal persons doing business in the county.

We submit, if the Court please, that having shown the existence of disproportions in both Houses of the Legislature, to the extent that they exist in New York, we have presented a prima facie case, and that the burden then is upon the State to justify the system of apportionment which now exists, and we say to the Court that the justification cannot be, under the Fourteenth Amendment, one which says at one time a majority of the voters of the State enacted a Constitution which embodies in it a preference for persons who lived in rural areas, because those persons of then controlled that convention.

If your Honors please, where there is an accidental disparity, we think that under the Fourteenth Amendment the apportionment must fall.

[fol. 453] Judge Levet: Do you think that there is anything inherently unconstitutional in each county having an Assemblyman? In other words, do you contend that there should be no geographical weight whatsoever?

Mr. Sand: I contend that whatever the basis or means used to determine the apportionment of the Legislature—

Judge Levet: Can't you answer the question yes or no?

Mr. Sand: I say, yes, it is permissible to have one representative per county if the overall consequence of the apportionment system is not to arrive at a legislature in neither house of which is there proportionate representation of population.

In other words—

Judge Levet: In other words, it is all right to have that in a situation in which there is no such discrepancy in the Senate; is that what you mean?

Mr. Sand: It is all right—

Judge Levet: All right to have one house like that?

Mr. Sand: I say at a minimum there must be one house [fol. 454] which is proportionate to population. I say that the other house may be apportioned on some other basis, provided that the result of using that other basis is not to achieve an apportionment which is grossly disparate to population.

Judge Waterman: Let me ask you a question. There is an area in the State of New York which is particularly bad from your point of view, because there are very few people in it, which ought to have or ought not to have an equal representation in Albany, because it represents a natural vacational ground, the preservation of natural resources and the like. Should it have an equal representation or should it not?

Mr. Sand: It should have representation. But the fact that the people—

Judge Waterman: Is it of interest to the people of the State of New York to have their vacational areas protected?

Mr. Sand: Of course it is of interest to the people who reside there and those who vacation there. That is why I emphasize that the contention which is being made is not that there should be any area of the State or any interest of the State which is not represented, but if you say that

[fol. 455] because the people who vote in that area reside in that area, their vote is of greater significance than those who reside elsewhere, you are saying that because they vote there they are worthier of representation, they are somehow better.

In the days when there were urban minorities and in those States where there are today urban minorities, nobody thinks of saying, "We must protect the urban minority because they could be dominated by the rural interests, and therefore we have to weight the votes of the people who live in the city and give them preference."

Historically, this reflects an assumption which was made explicit at the Constitutional Convention that somehow or other the people who live in the sparsely-populated areas are better citizens, and that value judgment continued today is in conflict with the Fourteenth Amendment. Moreover, with the passage of time and the shift of population, the extent to which there was a weighting or a preference has far exceeded the situation which existed in 1894, and if your Honors will look at the charts which have been admitted in evidence, Plaintiffs' Exhibits 1 to 7, you will see that there is a consistent trend, a consistent aggradation, if [fol. 456] you will, so that even if there were a desire on the part of the constitutional delegates in 1894 to prefer urban residents, the extent to which they have preferred them is something which I think would have been very surprising to them and clearly impermissible.

[fol. 457] How does one show invidious discrimination? Because, as I said before, obviously the Supreme Court intended that this be something which is capable of proof.

Judge Levet: When do you get the test from the Supreme Court decision? Do you agree with Mr. Justice Stewart in what he said in that case and what he said on the remand of the Michigan case? There is nothing there which indicates that any test whatsoever was laid down.

Mr. Sand: In this case, if your Honors please, the Supreme Court remanded the case so that there might be a trial as to whether or not the apportionment of New York State is invidiously discriminatory.

Judge Waterman: All they said was they sent it back to us. I accept the sole responsibility. I wrote the opinion

saying that it was not justiciable. That was obviously wrong. But my two brothers said it was justiciable, and here we are.

Mr. Sand: More was said than that it was justiciable. The courts did not stop with a finding that it was justiciable. Because the courts found that discrimination of the sort alleged in the complaint of Baker against Carr, which is essentially the complaint here, stated a claim which was [fol. 458] cognizable within the Fourteenth Amendment, so that there is more than a finding of a technical matter of jurisdiction; there is a finding that the equal-protection clause does apply to the Fourteenth Amendment.

Judge Ryan: It stated the claim to the extent that placed the burden upon the court to examine whether or not the discrimination reflected a policy, and if it did reflect a policy, whether the policy was arbitrary and capricious or whether it had a rational basis.

Mr. Sand: If your Honors please, we submit that we have shown by the disparity a prima facie case, that the burden is then upon the State to show that it is a rational policy, that a rational policy has caused the existing apportionment.

Our contention is that a desire to give greater weight to the votes of persons who reside in one area of the state than another is not a rational policy which the Fourteenth Amendment can recognize or will recognize.

Judge Ryan: You do not urge here this legislation, congressional and state, creates a set of gerrymandered districts, do you? You say it is an overall policy?

Mr. Sand: Yes. There is an overall policy that throughout the State representatives be allotted on a basis other [fol. 459] than population.

Judge Ryan: And that is your only objection to it? You do not object to this provision of the Constitution or State enactment on the ground that it has created and carved out districts which discriminate against citizens by reason of their birth, place of birth, national origin, their section or their religious beliefs?

Mr. Sand: We say that it discriminates against persons on the basis of where they reside and vote.

Judge Ryan: And that is all?

Mr. Sand: Yes, sir. The Supreme Court of the United States has held that geographical discrimination with respect to the exercise of the franchise is violate of the Fourteenth Amendment.

Judge Levet: What case was that?

Mr. Sand: WMCA.

Judge Levet: This case?

Mr. Sand: This case..

Judge Levet: Where is there anything in the remand except that this is remanded for us to consider in view and in the light of, as they say, Baker against Carr?

Judge Waterman: Let us read the sentence. The sentence says: "On March 26, 1962, we held in Baker against [fol. 460] Carr, 369 U.S. 186, a justiciable constitutional federal cause of action is stated by a claim of invidiously discriminatory geographic classification."

Where do you get any question but what the burden is on you all the way?

Mr. Sand: The burden is on the plaintiffs to show a prima facie case of invidious discrimination.

Judge Waterman: Yes, we agree.

Mr. Sand: Our contention is that we make that prima facie case when we show the disparity. Of course, the Supreme Court did not deal with the question of how invidious discrimination is proven except that in some of the opinions it was indicated that this was a concept well recognized within the equal-protection clause, and there was reference to other equal-protection cases.

Your Honors, the sentence in the remand of the Supreme Court to which I had particular reference succeeds the sentence which your Honor read and is as in the—

Judge Waterman: Before you get into any trouble there, you had better discuss that with a grammarian, and I am referring to the two "and as" clauses.

Mr. Sand: I did more than that. I discussed it with the clerk of the Supreme Court.

Judge Ryan: Why do you say "more than that"?

[fol. 461] Mr. Sand: He advised me that there was no typographical error.

Judge Ryan: He was a proof reader.

Mr. Sand: This is the way the opinion came from the chambers.

Judge Waterman: Be sure to read it as you would a deposition, without accenting either clause.

Mr. Sand: "We believe the court below should be the first to consider the merits of the federal constitutional claim free from any doubts as to its justiciability and as to the merits of the alleged arbitrary and invidious geographical discrimination."

Judge Waterman: So they assume that there are no doubts about that. Which way is the assumption?

Mr. Sand: I think the intendment is free from any doubts as to whether a claim of alleged arbitrary invidious discrimination would set forth a cause of action under the equal-protection clause.

Judge Waterman: I go ahead with you, and that leaves the burden squarely on your shoulders.

Mr. Sand: That leaves the burden squarely on the plaintiffs' shoulders to show invidious discrimination, and how can a plaintiff obviously meet that burden, since the Supreme Court was not engaged in a purely academic exer-
[fol. 462] cise.

The three-judge federal court sitting in Oklahoma—and your Honors have a copy of the opinion—held that where there are disparities of as much as ten to one, that constitutes cogent evidence of invidious discrimination, and a prima facie case of invidious discrimination.

I respectfully commend that opinion to this Court as supporting the position of the plaintiffs.

Judge Levet: Do you have copies for each member of the Court?

Mr. Sand: The National Municipal League has compiled these.

Judge Levet: I asked you merely whether or not you had copies for each member of the Court. Can't you answer that simple question?

Mr. Sand: Yes. They reside on the clerk's desk.

Judge Levet: May I have copies of your papers, then?

Mr. Sand: I left them with the clerk for submission to the Court.

Judge Levet: Do you have any other copies?

Mr. Sand: Yes.

[fol. 463] Judge Ryan: Thank you very much. We are very grateful to you.

Mr. Sand: There are contained in that volume the opinions of the courts as listed on the table of contents, which is the second page. There have been included in the volume Thermo-Fax copies of the report of the Special Master in the State of Wisconsin, and the opinions of the Supreme Court of Chittendon County in Vermont, and of the highest court of the State of Rhode Island.

Judge Ryan: You did a lot of work on this.

Mr. Sand: Thank you. I just tried to give credit to this monumental job to the National Municipal League, which did the actual compilation.

Judge Ryan: You can convey my thanks to them also.

Judge Waterman: I will parrot the question which Judge Stewart asked in the argument on the stay: Are you claiming that under the Federal Constitution, the Fourteenth Amendment, the New York Constitution is unconstitutional or are you claiming only that there is a statute of the State of New York which is unconstitutional under the Federal Constitution?

Mr. Sand: I am claiming that the Constitution of the [fol. 464] State of New York is unconstitutional under the Federal Constitution.

Judge Waterman: That is a rather remarkable statement. Do you know of any case anywhere as to that?

Mr. Sand: Yes, your Honor. In Pearce v. The Society of Sisters. There was adopted in a mid-Western state by initiative and referendum, I believe, a provision in the state constitution which prohibited attendance at parochial schools.

Judge Ryan: That was in Oregon, I believe.

Mr. Sand: Yes, your Honor.

The Supreme Court of the United States held that the Constitution of Oregon violated the Federal Constitution.

In at least half a dozen cases involving integration of the public school system, federal courts have held that provisions in the state constitutions requiring segregation of the races is unconstitutional. A three-judge federal

court in Georgia has held that the apportionment provisions of the Georgia Constitution are unconstitutional.

Judge Waterman: I just wanted to make sure where you stood.

Judge Levet: In other words, your contention is that [fol. 465] it does not make any difference as to what the majority of the voters of New York want, a constitutional provision is out of order, is that so?

Mr. Sand: Yes. The majority cannot enact a provision which is violative of the Fourteenth Amendment. The three-judge federal court in Oklahoma said, rights under the Fourteenth Amendment are not subject to the will of the majority.

Judge Levet: I understand you.

Mr. Sand: If the context be moved from the Fourteenth Amendment to any other mandate of the Constitution, I think conceptually it becomes much simpler. Obviously a state cannot say by an overwhelming vote that persons of a particular race or class cannot vote.

Judge Levet: But you do concede that any rule which we might derive from Baker against Carr is purely implied. There is no statement in the opinion which in any way indicates that your contention of the so-called geographical discrimination is pertinent. Where is there any Supreme Court determination of that? In fact, they have expressed their opinion before Baker against Carr to the contrary.

Mr. Sand: In the next-to-the-last sentence of the majority opinion in Baker against Carr.

[fol. 466] Judge Waterman: What is that.

Mr. Sand: "We conclude that the complaints' allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment."

Judge Ryan: That is at page 237, and must you not read that along and together with the paragraph I read to you from the same opinion just a few minutes ago? It has to be read together with whether or not the legislature or congressional enactment evinces a policy which

is rational and which is not simply arbitrary and capricious. Must not you read that with what is at page 226?

Mr. Sand: Yes, with what is at page 226, and with the facts of the case before the Court.

However, once the Court recognized that we were dealing with an equal-protection problem, certain other consequences which the Court was not called upon to deal with in Baker against Carr logically follow, and that is that the basis upon which the state is apportioned must be a basis which can stand the test of the Fourteenth Amendment, which is why in almost every other case after Baker [fol. 467] against Carr, including cases where there was a system of allocation and not merely a crazy-quilt, the courts have said that the equal-protection clause applies, and that as a minimum in at least one house there must be representation proportionate to population.

Baker against Carr was not a case in which the State came and attempted to say that there was a policy behind our apportionment. This is a case in which the State says that there is a policy behind our apportionment, and that policy is that in both houses of our Legislature we are going to give greater weight to the votes of persons who live in one area than to the votes of persons who live in another area. And we say that that is invidious geographical discrimination which the Fourteenth Amendment will not permit.

Judge Levet: Do you concede that it is permissible as to one house?

Mr. Sand: Your Honor, I would like to give yes-or-no answers when I can.

Judge Waterman: I like those answers.

Mr. Sand: I know you do. I say one house must be proportionate to population and the other house need not be proportionate to population provided there is not too great a disparity from population.

[fol. 468] Judge Levet: Whatever that means.

Mr. Sand: That would mean if apportioning the other house of the Legislature the base were not pure population but, for example, gave regard to political subdivisions, that would be permissible if that did not cause such a gross disproportion to population as to in effect sub-

stantially weaken or disenfranchise the persons who were not preferred by such enactment.

Judge Levet: Then you concede that there may be some care for minorities in the state?

Mr. Sand: I think there should be the greatest care for minorities in the state. I think that everybody in the state should have a free and equal vote, and the moment you say because this person is in a minority you have to put him on a parity with the majority, you are saying even though there are fewer, they are somehow better and should have as much influence as if they were as many.

Judge Levet: You concede that there may be some geographical weight in districting; is that so?

Mr. Sand: In one house of the Legislature, so long as the consequence is not to cause a gross disproportion to population.

A much more articulate statement of that proportion [fol. 469] than mine was made by the Solicitor General of the United States.

Judge Levet: I don't know where he got his thoughts.

Judge Waterman: He made it in Tennessee at the Bar Association, which was a receptive group to make it at.

Mr. Sand: Wherever he got it, if your Honor please, I adopt it.

Judge Levet: I assume it is not a pipeline.

Judge Waterman: Do I get your argument that unless one house of a legislature is based upon population the act of the state in doing otherwise is completely irrational?

Mr. Sand: I am sorry, your Honor, I am not sure I understand.

Judge Waterman: It is the converse. The Supreme Court says that a legislature may be made up almost any way they want to make it up, providing it is done rationally. You say if it isn't done in at least in one house on a population basis it comes within that rule; therefore it is irrational?

Mr. Sand: Because it reflects a policy judgment which prefers one group of citizens to another, and that is a [fol. 470] policy judgment which the Fourteenth Amendment does not permit.

Yes, your Honor, that is the position of the plaintiffs.

Your Honors, we have shown the disproportion. We show and would show to the extent permitted by this Court the legislative history of this proposal.

[fol. 471] We have offered to prove the consequences in terms of their effect upon the persons residing in the areas discriminated against. We submit to this Court, we have shown or attempted to show by the only means by which it is possible to show that the apportionment of this state is based upon a judgment which prefers one group of citizens to another in violation of the equal-protection clause, and that therefore the apportionment of this state is not in conformity with the 14th Amendment.

If your Honors please, we have also briefed questions concerning remedy, and if your Honors wish to hear that, I will proceed.

Judge Waterman: I wish very much to hear it.

BRIEFED QUESTIONS CONCERNING REMEDY BY MR. SAND

Mr. Sand: The question of remedy of course is very troublesome, and one reading through the opinions of other courts finds that there is no unanimity as to the relief which should be granted.

We prayed in our complaint filed 15 months ago that after this Court declares unconstitutional the existing apportionment that it retain jurisdiction of the case, and that the Legislature which would then be freed from the necessity of proceeding by constitutional amendment would therefore be afforded an opportunity to itself promulgate [fol. 472] an apportionment of the state.

Clearly it is desirable to have the elected representatives of the people determine the precise composition of the state's Legislature, and we ask that, and that is the extent of the relief prayed for in the complaint.

We are, however, now before this Court fifteen months after the complaint was filed, and we are faced with a situation of an election to be held on November 7th and a primary on September 6th. The State of New York in its answer, the defendants Attorney General and Caroline Simon, have said in effect even if this Court does agree with the plaintiffs, there is not enough time.

When we were before this Court before they said we were too soon; now the defendants say we are too late.

But we are not too late because there exists within the equitable powers of a federal court the power to effectuate its decree and its order.

Your Honors will see from the holdings of other cases that there are a variety of ways in which this can be done. There is a special master. There is the at large election. There is the Court itself promulgating an apportionment. [fol. 473] Bearing in mind that we are now dealing with a situation in which the Court having issued its decree, the prescribed period of time has elapsed, and the Legislature has done nothing. We think that would not happen in New York State. We would hope that the Executive and the legislators would be more mindful of the requirements of the Federal Constitution.

However, if that did happen, and if this Court were not disposed to invoke any of these other remedies, we have suggested in our brief a remedy which it is well within the power of this Court to invoke, which would require not the changing of a single line on an election district map, not require any incumbent to run for reelection from a different constituency, create no vacancies, would permit the conduct of the election to be held precisely as it is intended to be held. However, we say that in the Legislature so elected the votes of the senators and the assemblymen shall be weighted so that the assemblyman from Schuyler County has a vote of one and the representatives of the other counties have a proportionately greater vote.

We do not urge a weighted voting system as a permanent remedy. Whether that would be a desirable way of [fol. 474] apportioning New York State in the future is for the Legislature. However, we say to New York that if a decree be entered invalidating the existing apportionment, and if the Legislature remains idle, there is at least this one remedy for which there is ample time, ample machinery and which would achieve the relief sought by the action, which is to have the 17,000,000 people of the state governed by a legislature which is composed in conformity with the Federal Constitution.

Judge Waterman: Would you have any objection to our doing exactly as was done in Tennessee, sitting on our

hands and saying, "We are not going to do anything until the Legislature has met at least once"?

Mr. Sand: The difference is this: If in Tennessee the Court did nothing, the Legislature could act, but unless the Court does something here, unless this Court invalidates the constitutional apportionment provision, not even the Legislature can do anything.

Judge Waterman: You are assuming more in Baker v. Carr than was actually said. All they said was it was justiciable, send it back.

Mr. Sand: The Supreme Court sent it back. I thought your Honor was referring to the opinion of the three-judge [fol. 475] court on remand.

Judge Waterman: I was. But from what I say, the situation in New York is different from the situation in Tennessee. I think you must be misconstruing what the Supreme Court said in Baker v. Carr.

Mr. Sand: I venture your Honor it was different with respect to the ability of the Legislature to correct the apportionment without a decree of the Court. In that respect, the situation is different, because in Tennessee the Legislature, consistent with the Constitution, could reapportion and there was no need for the Court to take any action. The Legislature, having read the Supreme Court opinion in Baker v. Carr, said, "We will remedy the situation ourselves and not impose this burden on the Court."

Judge Levet: You are saying there can be no reapportionment unless this Court holds the state constitution and statutes unconstitutional?

Mr. Sand: Your Honor states the matter exactly. If there are no further questions, I have concluded.

Judge Waterman: Thank you very much, and particularly thank you for all this reading material.

Mr. Sand: That, your Honor, is known as the weight [fol. 476] of authority.

Judge Waterman: We will recess for five minutes.

(Short recess.)

[fol. 477] Judge Waterman: Do you wish to proceed next for the City, Mr. Offner?

ARGUMENT ON MOTION TO DISMISS THE ENTIRE COMPLAINT BY MR. OFFNER ON BEHALF OF THE CITY OF NEW YORK

Mr. Offner: On behalf of the City, your Honor, I don't think I need impress upon the Court the importance of this case to the people of the City of New York and the fact that would have been much more evident than I believe it is right now if the evidence had been received as to the various legislative acts that have been enacted over the years dealing with the relationships between the City and the State.

At the same time, I feel that I cannot say anything that would not be repetitive of what my learned colleague has said and said much better than I could, and so I will rest on his statement.

Judge Waterman: Nassau?

ARGUMENT ON MOTION TO DISMISS THE ENTIRE COMPLAINT BY MR. NICKERSON ON BEHALF OF NASSAU COUNTY

Mr. Nickerson: May it please the Court, after what I can only describe as a magnificent argument by Mr. Sand, I have very little to add. I would like to point out the significance of this case to Nassau County. Since the 1950 Census, we have doubled in size. We had three State Senators, as we now do as a result of the 1950 Census, the apportionment under that census. Under the new apportionment we will still have three State Senators. So [fol. 478] that although we have doubled in size, from 650,000 persons to almost 1,300,000, we will still have the same number of Senators.

Monroe County, which will have less than half of our population, will have the same number of Senators as we do.

Now, in the Senate, on the average our senatorial districts are two and a half times as large as the smaller Senate districts. In the Assembly, the situation for us is even worse. If you add together the populations of the 31 least populous counties in the State, you discover that their population, aggregate population comes to almost 1,300,000—ours, the same as ours. They have 30 Assemblymen. We have six. So it means at the present time we are outweighed by about five to one.

Schuyler County, as has been pointed out, had an Assemblyman for less than 15,000 population. Our largest Assembly district has 340,000. So it means that it requires approximately 23 votes in Nassau County to one vote in Schuyler County.

Judge Levet: Isn't that a matter of reorganization in Nassau County on the part of the Board of Supervisors? [fol. 479] Mr. Nickerson: No. It has nothing to do with the Board of Supervisors, your Honor. This is not a problem in gerrymandering.

Judge Levet: No. I do not speak of gerrymandering, but if you had six Assemblymen and one Assembly district has over 300,000 in it, isn't it possible to rearrange that under the present formulation?

Mr. Nickerson: Yes. It would be, your Honor.

Judge Levet: Then there is no complaint.

Mr. Nickerson: There most certainly is a complaint.

Judge Levet: What is the complaint?

Mr. Nickerson: On the average, our Assembly districts are fifteen times as large as the Schuyler Assembly districts, so it requires fifteen of our votes in Nassau County to equal one vote in Schuyler County.

Mr. Levet: You have how many?

Mr. Nickerson: 340,000 at the present time.

Judge Levet: That is something which Nassau can very readily remedy. I am not speaking of comparisons with Schuyler County. I am speaking of comparisons in Nassau [fol. 480] County between the various six districts.

Mr. Nickerson: Then we are talking of different things, your Honor, because I am talking of comparisons with Schuyler County, and on the average our Assembly districts are fifteen times as large as Schuyler County's. So we do have a complaint in that regard.

Judge Levet: That is your average, you see.

Mr. Nickerson: On the average it is fifteen times as large as Schuyler County's, and in the Senate our average is two and a half times as large as the smallest senatorial district.

Thank you, your Honor.

Judge Levet: I understand that.

Judge Waterman: All right, Mr. Galt.

ARGUMENT ON MOTION TO DISMISS THE ENTIRE COMPLAINT BY MR. GALT ON BEHALF OF DEFENDANT

Mr. Galt: May it please the Court, in the course of counsel's discussions considerable reference was made and a great deal of exchange of comment between Court and counsel took place with reference to the remand of this case, and I emphasize that there was no reversal; it was vacated and remanded for reconsideration in the light of Baker v. Carr.

I was singularly struck, during the course of the entire [fol. 481] argument, with the thought that all of the opposing argument seemed to have been directed far beyond any light that would be shed by Baker v. Carr, almost I would say—indeed, I would say, in many respects and in most material respects, contrary to the Supreme Court's decision in Baker v. Carr.

I think one could not have listened to the plaintiffs' counsel arguing this case without realizing, to begin with, that the entire argument is predicated on the notion that there must be constitutionally an arithmetical basis for the representation of a State legislature, and, first of all, I want to say that this is not what Baker v. Carr held. I think I need not more than mention to the judges who have read that decision carefully that throughout the opinion there is repeated again and again emphatically—it is underscored in the opinions—that mere numerical representation is not the test for rationality. It is a question of what is equal and what is equal protection in the eyes of the law and how best a legislature may represent to the people, and that does not mean simply representing them on a strict or as close to a strict numerical basis as possible. [fol. 482] The Macdougall case is still law, the Macdougall case, which was referred to so frequently in the Baker opinion, and the Macdougall case of course holds that the function of government is simply not to represent numbers and to take into account, among other things, such elements as the diffusion of population, the interests of the thinly-populated counties. This is a composite of interests which must be taken into account.

Let us, for example, take one of the several elements. There are elements other than population. There is such a thing as community of interest which the counties to such a great extent and so very well exemplify. There are such things as geographical considerations, and there are other considerations which may very properly belong within a consistent, reasonable, rational apportionment system, such as we say New York's undoubtedly is.

Now, let us take geography alone for a moment. At I believe it is page 24 of our opening memorandum, we pointed, for instance, to the fact that the assemblyman, for instance, from St. Lawrence County—I guess that is the northeast corner of the State—represents an area covering no less than 2,767 square miles. Now, that is larger [fol. 483] than the State of Delaware. Just to mention 2,700 miles in a moment may not give us the full conception, but here is one county of the State actually larger than the State of Delaware, and I believe it is by no means the largest county.

He represents very few people, comparatively. The plaintiffs say comparatively few people. But that constituency is spread over an extremely large geographical area.

Now let us take the Senator from the senatorial district which encompasses St. Lawrence—that is St. Lawrence, Clinton and Franklin Counties, going across the entire northern tier of the State, going all the way from Ogdensburg on the west to Pottsburg on the east. And I correct myself: St. Lawrence County would be in the upper northwest part of the State.

Judge Ryan: Wouldn't that be among the Adirondack Mountains?

Mr. Galt: I do not profess to be enough of an expert to tell you how much of the range is there, but there must be undoubtedly a portion of the Adirondacks in that area.

St. Lawrence also has the seaway, and there are dif- [fol. 484] ferences in terrain and things of that sort, but the point I want to make at this moment is that the senatorial district represented by a single Senator has a geographical area of 5,511 square miles. Now, that is larger than the State of Connecticut. I need not say that

if there was to be a strict population standard adopted, let us say for argument's sake, in either house or both houses, it would necessitate certain things which would militate, I think, very decidedly against representative democracy, even in the sense in which that term has been bruited about today, because in order effectively to represent an area like that, isn't it obvious that the legislature would have to be so large as practically to make it ineffective? Imagine discussion in a tremendous legislative body. Think of the comparison of figures now between the New York State Assembly and Senate and that of the United States Senate and House of Representatives itself. There are only one hundred Senators in the United States, fifty some-odd in the State of New York. Apart from the physical difficulties—which of course are not of great consequence—of building tremendous new chambers to encompass them, what about the real fact of representation? And [fol. 485] the legislature and its constituents, so far as accessibility is concerned, would be an almost impossible matter. How could a legislator under such circumstances represent a constituency with the present 40th Senatorial District and the present representation of the single Assemblyman in each of the three counties comprising, for example, that district? The difficulties of communication between the legislator and his constituency are already so enormous as to make it questionable that this could be made even thinner and more difficult.

His job is obviously different from that of the legislator in one of the heavily concentrated, populous areas down-State.

Now, this is only one facet of the entire question of the elements of an appropriate apportionment system. Isn't it perfectly valid that such a factor which appears in the New York statutes, in all these facts of which we can take judicial notice, as mentioned by your Honors this morning, and every other thing that is relevant here—isn't it obvious that this need for community representation through the counties, through the developing counties, which are more and more becoming an important area of government [fol. 486] administratively, in the matter of liaison for the

State Assembly—isn't it clear that all this is an element which is perfectly valid, perfectly reasonable and perfectly valid to take into consideration?

And then, of course, there are other elements besides territory, besides community of interest. There is such a thing as the modified approach we have in the State of New York to the very serious question of what arises to prevent real difficulties, real representation difficulties, through having a certain degree, reasonable degree of concentration insofar as the tremendous urban and municipal counties are concerned, and if this can be considered as a composite picture, all of which the plaintiffs have ignored in pegging and premising their case entirely upon the one absolute, unequivocal standard of population—aren't these rational, reasonable elements to take into consideration?

I should like to quote—and I am sorry that I don't have the page number, because I do not have the official report—perhaps Mr. Sand would be good enough to oblige—the Court may have it handy in the Baker v. Carr decision.

[fol. 487] Judge Ryan: Do you want it, counsel?

Mr. Galt: I am sorry, your Honor. This is Baker v. Carr on remand.

Judge Waterman: I have it right here.

Mr. Galt: You have that here in the compendium of opinions.

Judge Waterman: I have it here. Do you want it?

Mr. Galt: Yes. I don't know the page on which it would fall.

Judge Waterman: It is pretty short. Baker v. Carr—I am sorry. I thought you meant our own case. You have it.

Mr. Galt: "We find no basis for holding that the Fourteenth Amendment precludes a State from enforcing a policy which would give a measure of protection and recognition to its less populous governmental units. These subdivisions constitute an integral and historic part of the State's governmental structure. They have real and substantial interests in the State's laws, and the State could reasonably conclude that its best interests would be subserved by their effective participation in state government

[fol. 488] and in the formulation of its laws and policies. The State has the right if it sees fit to assure that its smaller and less populous areas and communities are not completely overridden by sheer weight of numbers."

Judge Ryan: May I interrupt just a moment?

Mr. Galt: Certainly.

Judge Ryan: You see, what bothers me here: you are dealing with a policy which was enacted and made part of our Constitution in 1894.

Mr. Galt: Correct.

Judge Ryan: It still is part of our State Constitution. I recognize that at the time of its adoption it did not represent a policy which was either arbitrary or capricious. In the intervening almost seventy years, Mr. Nickerson has pointed out, the situation has changed to such an extent that today, with a proportion of fifteen to one, it is now and has become a policy which is irrational and from which or for which the logic has long since disappeared.

Now, what have you got to say in answer to that?

Mr. Galt: I would say first that the logical and rational policy of 1894 has not become the irrational policy of 1962, [fol. 489] despite the fact that there are, of course, undoubtedly population movements, population shifts, development of certain areas, growth of population in one area, perhaps loss of it in another area.

The rationality of the formula with only slight modifications through the years that have ensued—they have not been such as to throw the representation formulas out of gear in a really substantial or irrational form with the State itself.

To take these extreme comparisons that are made—and this is one of the faults of the theories underlying the Silva charts which were discussed this morning—to take only the extremes into account overlooks many, many factors.

First of all, there are such things as averages and norms. Even if we were to look now only to the population factor, which I think it can be agreed is not the only criterion, but even so, the population deviation is not what it sounds to be from these extreme figures, taking one situation where, in ten years, from 1950 to 1960, let us say, there has been a tremendous jump in population. Things happen between

[fol. 490] the poles of the ten-year period, too. But if you look at New York's comparison of seat holdings and seat representation with population, unlike Baker v. Carr, which, to use the expression of Mr. Justice Clark, is a crazy patchwork, a crazy-quilt patchwork, we have a fairly consistent and almost undeviating line, which would show an index close to seat representations as compared with populations in counties and so forth, and that can be traced arithmetically.

That is one thing.

[fol. 491] Perhaps my associate will be able to get the figures in our brief so that we can make this a more graphic portrayal of that point. We have some of the figures in our brief. For example—I ask your Honor's indulgence for just a moment.

Let us take the 1960 census, and this may be followed by the figures we provide at page 18 of our brief, and let us—although there are of course, a good many more urban counties than the six represented by the six individual plaintiffs in this state—let us take these six, these so-called horrendous examples which have been emphasized to the Court time and time again. Let us take their six counties.

They had, according to the 1960 census, a citizen population of 9,129,780. That is 56.2 per cent of the state's total citizen population concentrated down here in this geographically very tiny portion of the state. Now, they were represented by 72 Assemblymen and 28 Senators—48 per cent of the Assembly and 48.3 of the Senate. Now, should the Legislature reapportion the state on the basis of the 1960 census figures, these counties, the very ones we have been talking about, these six, will have 26 Senate seats, 69 Assembly seats, 45.6 and 46 per cent respectively of the [fol. 492] two houses.

At page 12 there are ten of the most heavily populated counties. We add four more. These are counties of substantial size populationwise, and they have been referred to also in the charts in this case. These counties, in addition to the six represented by the plaintiffs, would take in such counties as Erie, Westchester, Monroe, Onondaga. Under the current apportionment these have 38 Senate

seats, 65.5 per cent of all the Senate, and 93 Assembly seats, 62 per cent of all the Assembly.

If upon reapportionment on the basis of the 1960 census figures the count will be 37 Senate seats—and incidentally, there would be only 57 Senators then instead of 58—and 93 Assembly seats. That is practically 65 per cent and 61.3 per cent, respectively, of the two houses.

I mention this not to go into any figures at great length, but to mention this: There were four more counties that were referred to in the brackets of the most populous. As we extend the figures, the picture and the pattern emerge more and more clear. Here are the plaintiffs suggesting not only that there is discrimination, but I believe their [fol. 493] complaint uses the words "grossly unfair discrimination" in both houses, and here we find that the majority—for this is a class suit—are actually coming into court, and in some statistical fashion, which I confess I am unable to follow, because these figures I gave you are the figures, that they are the haplessly persecuted minority. On their own arithmetical standards, I respectfully submit that their whole theory necessarily must come crashing down.

Now, passing on to another phase of this, I should like to call attention among the things which the Court may judicially notice: We are here in the City of New York, about much has been said in this litigation. In fact, we have the City Council as a party defendant—perhaps more accurately a party plaintiff for practical purposes in this litigation, and I take it that they do not blush when they state their position, when, as it happens that in 1961, just a year ago, less than a year ago, a new City charter was enacted under which, in apportioning representatives to the New York City Council, not only were their representatives elected on a population basis, but I believe your Honors will find upon referring to the charter two representatives-at-large from each county. There is Richmond, [fol. 494] which is so downgraded in a sense in this litigation that it is not even made part of the City of New York, but it is part of the City of New York, and its territorial interests are recognized by this very same party defendant

in having a City Council, and they are one of the defendants, in which you have this type of representation.

You could go under this new City charter also to the Board of Estimate.

I believe that the 200,000 or so people—there may be a little bit more—in Staten Island, two or three hundred thousand people, have the same vote on the Board of Estimate as the two and a half million in Kings County, if we want to follow Mr. Nickerson's examples.

I am not saying anything here—I meant no comment or aspersions. Please understand that, if I may respectfully say so. But I do point to this: Here is a 1961 model of the largest city in the United States, and they clearly have other elements in their apportionment formula. They object to the state's apportionment formula.

Now, on this question of burden of proof, may I say that the reference to the Oklahoma case has in it a lot of [fol. 495] illusory factors, I think. There they held that the ten-to-one or so disparity—I don't recall exactly—is that what it was, Mr. Sand? I want to give the correct figure—may shift the burden where the State Constitution was based on a strict population standard, and so, where could the question of another rationale come in when the State Constitution itself, which of course, on the face of it is entitled to the greatest weight and respect in the state apportionment system, required a population base? How could we use this shifting of the burden of the proof, assuming the position is in any way in that regard as a precedent, for the plaintiffs have an astonishing and remarkable theory of the shifting of the burden of proof in this case?

Here we have an entirely different rationale, population plus geography, community of interest and areas of concentration right throughout the statutes of our state, and I say they must prove that these are arbitrary and without any basis in reason, not that we must disprove it.

Now, I have given your Honors the statistics which show the fact that despite New York's apportionment system not [fol. 496] being geared entirely to population, even with the accommodation of other factors in the situation, there isn't this great disparity that the taking out of statistics

from one extreme to the other at different points in the decade which operate, the intervals between changes of apportionment.

These things don't show the real situation in New York, and I am sure that the Court fully realizes that.

I recall Mr. Sand saying something in his argument to the effect that—and here we enter upon a field which I have not wanted to enter upon: partisan politics, in a sense—but he made a remark that the party with the majority of the votes does not elect the majority of the Legislature. Well, of course, that is essentially question-begging. Even if we were off a population standard, assuming we were using the population standard—even if we were off by a fraction of a per cent, the argument would apply. In other words, it proves too much. Here is a Governor that is elected by a majority vote, and he is of the same political party as the majority of the Legislature.

This argument of the plaintiffs certainly I cannot see as having any relevance, any effect, any weight as addressed to what must be the very difficult question for the plain-
[fol. 497] tiffs to meet, of meeting their burden of proof.

It is beyond cavil, I should think, that even using just the 14 counties—and there are more urbanized counties than that; in their complaint your Honors will find that the plaintiffs themselves referred to the census statistics, and using the census formula of what constitutes an urbanized county, I want to underscore that when we limit ourselves to 10, to 14 counties, believe me we by no means hit the range of urbanized counties throughout the State of New York. The picture painted of rural versus urban counties, which might have had some application in 1894, is hardly from any fair point of view a real or rational picture today, itself. But the situation is such that the urban counties, limiting it even to 14, have an overwhelming majority, and the plaintiffs cannot show that they are harmed by the apportionment legislation of which they complain.

Now, much was suggested by Mr. Sand on the very interesting and intriguing subject of bicameralism. I confess that for the life of me I cannot follow an argument such as was made here, that it is all right for one house

to be geared to population only and all right for another [fol. 498] house to be geared to something else, which immediately opens the door to considering other factors, and then by a very neat little argumentative arrangement, by a little adroit presentation, suggesting what on its face sounds seemingly reasonable and plausible, that it is very nice to have one house one way and one the other; but one of the many difficulties with this interesting little theory, as I see it, is that the greatest model for the theory of bicameralism—our own United States legislature, the House of Representatives and Congress—I think it is beyond any peradventure of doubt that neither the House nor the Senate is on a strictly population basis. The Senate beyond argument and the states themselves use the very same basis that we use: have representative, regardless of population, for every single state in the United States.

Doesn't that belie the entire theory and claim of the plaintiffs? And how would we take into account, for instance—and it is true here in New York State, with counties as large as Connecticut, larger than Connecticut, Delaware and so forth, how would difficulties such as geography be handled if we did not have some way in which, fitting the entire pattern into one picture, taking all these factors [fol. 499] into consideration, we didn't take into some account such important factors, upon which I don't want to expand at any length, as geography?

I only want to supplement that by saying this: If indeed the suggestion Mr. Sand offers does not actually violate the federal model, and if it is rational to represent population only in one house and other factors only in the second, what is irrational, what is wrong, what is unreasonable, what is invidiously discriminatory about having a composite of those same factors in both houses?

I know today of no law, no case, no constitutional provision in the federal range, not in the state range; I know of no judicial authority for the proposition that there must be a bicameral arrangement, whereby one house is on factors other than population and the other simply on population. Certainly the Supreme Court has not said so in Baker v. Carr. No such suggestion appears. And as far as the Solicitor General is concerned, I think your Honors

disposed of that without any need of elaboration from me. Those are his remarks, and a little later on I may advert to other remarks of this proponent of the plaintiffs' theories to show that in fact his theories do not square entirely [fol. 500] with the plaintiffs' theories—even a staunch advocate of the Baker v. Carr decision.

Now, there has been some suggestion of analogy to the Fifteenth Amendment.

Judge Waterman: We understand that is out of this case. If we are wrong, we want to know. The Fifteenth Amendment is not involved here.

Mr. Galt: No.

Mr. Sand: Except there is an analogy upon which plaintiffs rely—only as an analogy.

Mr. Galt: I put it this way, your Honor, not to elaborate on it, not in any way to enter further into the discussion which your Honors had on that subject this morning, but I can understand that when an apportionment act, for example, would address itself directly to the arbitrary and unreasonable discrimination against a minority, that is one thing; but here what do they substitute in the way of their theory? They substitute the majority for, let us say, someone who would be impinged on by reason of violation of the Fifteenth Amendment. Here the offended party is what? This majority of urban counties. And that, of course, will not support the theories that they are urging.

Now, there are several other items that were mentioned [fol. 501] in the course of plaintiffs' argument. Much mention is made, for example, of the full-ratio rule and its application to the six counties. Well, of course, this does not mean that there is a design, a deliberate design carrying over from 1894 down to the present day, or what was never a design, to use another theory, in 1894, according to the Court's view of the situation and our view of the situation, has not become a design in 1962 simply by resting on what happened in 1894.

It is very obvious why the full-ratio rule for the Senate was adopted. At that time, in 1894, they had only two large concentrations of population that concerned them, as the remarks in the convention proceedings show, and that was Kings—then I guess the City of Brooklyn—and New York.

which at that time included a good portion of what is now the Bronx; and here were counties which, unless such a full-ratio rule or its equivalent—and I am not saying that New York's apportionment is the greatest system of apportionment that could have been devised for the state, but I say it is a very rational one and reasonable one in this respect—here were counties that were growing. Here is what created the concern. And they wanted to make the [fol. 502] provision, and here is where the second ratio comes in, and it is perfectly rational, perfectly reasonable for other counties growing but not growing at that rate, not with that densely concentrated population, counties larger in area in most instances if not all instances, to have some opportunity to have their growth reflected while the growth of New York and other counties are reflected.

[fol. 503] If in the operation of a full-ratio rule—and that was the only thing operative in 1894—of course the enlargement of the Senate was not involved in 1894; at that time the Senate consisted of only fifty. But the full-ratio rule at times may result, as Mr. Nickerson has complained of in the case of Nassau County, in falling short of a full ratio, some portion of the period, and thus, in the next period, perhaps not just then acquiring the additional Senator. But look at Suffolk, which is a very fast-growing county, 141 per cent. Now it will have three Senators. These things, in other words, balance off. They have a way of working out which is not in any sense invidious.

Now, they have said that the size of the Senate provision causes underrepresentation of urban areas. We have shown, I think beyond any possibility of doubt from the figures themselves, the plaintiffs' own statistics, that the urban minority is not a minority at all. It is a majority.

And here, from the plaintiffs' own statistics, we will see that the decrease of the Senate size as a result of the 1960 census, if and when a new apportionment is enacted—that would probably be in a year or more from now; I [fol. 504] don't know when that would be—when that would be done, four seats would be taken from New York and Kings County. They would each lose two Senate seats.

But where do these seats go? One seat goes nowhere at all, because the size of the Senate will be reduced from 58 to 57.

And one goes where? To an urban, an urbanized county, Monroe; and two go to Suffolk, one of the plaintiffs in this case, an urbanized county. The other simply evaporates.

Another thought that I think is very relevant to the entire consideration of this problem: when in 1894—and I refer to that largely because the plaintiffs have a second cause of action here predicated upon the alleged unfairness, the alleged constitutional infirmity of our own 1894 Constitution—but when in 1894 that Constitutional Convention completed its work, the people by a majority vote adopted that formula, which persists to the present day, and what has happened over the intervening decades—and I think that this has some bearing on the suggestion offered by Judge Ryan a few moments ago—in 1915 the question came in—there are various ways in which the question of [fol. 505] constitutional revision can and does come before the people of the State of New York.

One way—and we have elaborated on these in our briefs, beginning, I suppose at about page 7 or 8 or so; at page 8, I believe—one way is for the periodic twenty-year Constitutional Conventions, and another way is for the Legislature itself, regardless of the automatic provisions, the Legislature can present under certain circumstances constitutional changes which the people can enact.

After the people had adopted the 1894 provisions by a majority vote, not too many years after that, in 1915, they rejected proposals by their Constitutional Convention to amend the apportionment formula. The vote, as we have it at page 9 of our brief, was 891,000 and some odd to 371,000, and that happened again as recently as 1938.

Then the rejection was by a vote of practically one and a half million, to 848,000.

Judge Ryan: Was 1938 the last Convention?

Mr. Galt: I believe 1938.

Judge Ryan: When did the people vote last on whether or not to hold one?

Mr. Galt: 1957.

[fol. 506] Judge Waterman: They voted then not to hold one?

Mr. Galt: That is right. That was very recent. And we stress that in our brief because it is recent enough in the tide of events and contemporary events to recall that there was special stress placed by the then governor upon this very question of the possibility through the Convention of effecting a reapportionment.

In other words, reapportionment was squarely put as an issue in that regard, and yet the voters of New York refused to hold a convention.

I confess to your Honors that I do not presume to know the answer to one of the questions which was raised, and that is the question of what would happen assuming that a statute were passed which would contravene the present constitutional provisions. We don't know what would happen. That is a lot of dangerous ground to explore.

Mr. Sand cited the Maryland State Court opinion on the power of the Maryland Legislature to deal with this but I want to make it clear that the New York Court of Appeals, our state court, has not said anything about it, not anything that we know about, at any rate.

[fol. 507] Now, there were some exercises in what I term semantics—I hope that the Court does not think that I say this in any deprecatory sense about counsel's argument, but it could affect the meaning.

When this case was remanded—I am talking about the WMCA case now—to the United States Supreme Court, I take it that it is crystal clear, and I underscore the fact that there was no reversal, that it was a vacatur and a remand. The language which was stressed was that this Court should be free to consider the merits of the constitutional claim, free from any doubts as to its justiciability, and as to the merits of an alleged arbitrary and geographical invidious discrimination. I take it that there can be no possible construction that this represented—unless I misunderstood my friend's argument—that this represented a holding by the United States Supreme Court that on the merits as far as the plaintiffs' case is concerned, it had passed on the merits in favor of the plaintiffs.

I understand the case to be here for one thing and one thing only: for a full reconsideration in the light of Baker against Carr, and it is on that premise that we address ourselves to the Court.

I don't think that I need elaborate on incidental motions, [fol. 508] anything of that nature. We have in our answer raised the defense as to the status of the plaintiff WMCA. I do not propose to burden the Court with discussion or arguments in that regard.

I think that I may say this: These plaintiffs have utterly failed to establish a case. The burden is indubitably theirs, not ours, of establishing that New York's apportionment system is based on irrational factors which result in invidious discrimination—the only kind of discrimination within reach of the equal-protection clause.

[fol. 509] This they have utterly failed to do. Can one come in here armed with a sheet of statistics and say that "we tore these statistics out of some political scientist's textbook," or, "we prepared these statistics; there are disparities shown; we show you County X or Assembly District X over on the righthand corner of the state, and look at the disparity. This constitutes a case of invidious discrimination," according to their theory reduced to its simplest arithmetical terms.

The Court is being asked to accept an arithmetical base for a prima facie holding of invidious discrimination.

Isn't it obvious enough, and I think this exposes the entire weakness of the plaintiffs' case, isn't it obvious enough that they, knowing from the statutes, from the Constitution, from 68 years of successful operation of our apportionment system, and I say successfully—perhaps not perfectly but successfully—in the State of New York, giving the people good representative government, is this what is going to upset a system so geared?

They know these factors are in here; population is there, county lines, geography, community of interests are there, some degree of anti-concentration and not an unreasonable [fol. 510] degree, not a discriminatory degree in any real sense, could this possibly be overturned in a state like the State of New York by this kind of showing?

That is all that the plaintiffs' case consists of, a complaint and some statistics which in all probability except for the theories which underlie some of the statistics that were brought before the Court, the limitation to six counties—these things were within reach of the Court without having a word said by anyone in the argument.

I cannot believe—and I say this with the utmost sincerity—that this can possibly constitute a prima facie case or force us to have shifted to us the burden of proof to go forward to show that New York's apportionment is not irrational, is not invidiously discriminatory.

I say that on every factor that is present in the case and within reach of the Court in the case it seems incredible, utterly incredible to me that this could possibly be held to constitute even a prima facie case.

I go to the question of remedy not because I think it will ever be necessary for your Honors to reach that [fol. 511] point, but since it has been discussed and since I have no powers of prophesy, I take the liberty, if I may, of discussing it only very, very briefly.

It seems self-evident to me, and I think it will be just as evident to the Court, that a hasty reapportionment plan is bound to be a dangerous one. In any event, why tamper with the delicate machinery of apportionment under such hasty circumstances?

Here we have a primary date, September 6th. One need not be a political expert or political scientist or active in politics to know that right now petitions are being circulated, plans are being made, moneys are being expended.

On the other hand, they have a system which they propose as a stop-gap should this Court reach the question of weighting votes.

I can describe that—and this, again, is not meant to deprecate plaintiffs' argument in any way—I cannot describe it in any sense other than to say that it is silly. First of all, it assumes that arithmetic is the only answer, and nothing in Baker against Carr, so far as I can see—and I have reread it many times to find such a basis—would support any such assumption.

[fol. 512] What would be the effectiveness of a legislator who is merely one-eighth or one-fourth or one-third of a legislator? This concept in itself sounds silly.

An election at large, sort of a Russian roulette game, gives you a one-party legislature. I think that it is commendable candor on the part of plaintiffs' counsel for him to say he does not advocate a weighted-vote set-up for the legislature be used or even an election at large, the deficiencies of which are very well known to this Court.

Judge Ryan: You have it in the Board of Estimate, don't you? You have a weighted vote there.

Mr. Galt: I think we do. I don't want to be an expert on the Board of Estimate.

Judge Ryan: Mr. Gross, you were at one time an Alderman of our county. Don't they have a weighted vote there?

Mr. Gross: Yes.

Mr. Galt: For a state legislature even the plaintiffs themselves recognize the deficiency of these things which they recommend as stop-gaps.

When we come to the last proposition, the Court itself alluded to what Mr. Justice Stewart said the other day [fol. 513] about Michigan, granting a stay. If, perchance—and I honestly say to the Court that I cannot conceive of it happening—the Court should in any wise rule against us, a stay would prevent the operation of these hasty stopgap formulas which they suggest, even if this Court were to see fit to entertain such proposals.

None of these proposals—and there is no reason why the Legislature of the State of New York, even for a moment, should have to legislate without taking into account these very, very real problems posed by such things as population, geography and community interests—all of this, I think, shows that the New York constitutional formula was rational and even wise.

Speaking now, I would like separately to move to dismiss the second cause of action, if I may take them in inverse order. I don't think it is necessary to elaborate after all this Court has said or heard in the way of argument today, but I do wish to point out one thing, that the only operative rule or mandatory rule in the Senate at that time, for example, you had Kings and New York County with thirty-nine per cent of the population and

thirty-eight per cent of the Senate seats. This is de [fol. 514] minimis.

However, it would be possible to attack that constitutional formula as irrational, as invidiously discriminatory, as unconstitutional—and, of course, I need not say that from the standpoint of the equal-protection clause of the Federal Constitution, a state constitution is certainly entitled at the very least to a very, very great deal of respect.

I submit that not only the second cause of action should be dismissed but also the first. The New York apportionment system, whatever may be some of its operative difficulties here and there—there are such—whatever may be taken into consideration, we do have sixteen million people, there is a tremendous difference in the types of terrain, community interests, a tremendous development of counties these days, more and more in the direction of county development; when we have all of these things can it for a moment be doubted that this represents a consistent and rational plan? Can a case such as the one plaintiffs have put in here, dropping a few sheets of statistics on the desk together with a complaint which talks about things which prove to evaporate on inspection, urban communities grossly unrepresented; even on their theory that is not so. [fol. 515] With all of this I respectfully submit to the Court that the complaint is utterly lacking in merit. The plaintiffs' case is deficient in merit. There has not even been the semblance of an approach such as would have to be shown by these plaintiffs, showing of an invidiously discriminatory proportionment system operating within the State of New York.

I ask that the complaint be dismissed in its entirety.

Judge Waterman: Thank you, sir.

Westchester County?

ARGUMENT ON MOTION TO DISMISS THE ENTIRE COMPLAINT BY MR. LIBENSON ON BEHALF OF WESTCHESTER COUNTY

Mr. Libenson: I don't think I can add anything to the argument made by the Assistant Solicitor General other than to join in his motions so far as Leonard Berman, chairman of the board of supervisors, is concerned.

Judge Waterman: Suffolk County?

ARGUMENT ON MOTION TO DISMISS THE ENTIRE COMPLAINT BY MR. CORWIN ON BEHALF OF SUFFOLK COUNTY

Mr. Corwin: I am sure the Court will recognize that the Attorney General's reference to Suffolk County as being with the plaintiffs was inadvertent. We are one of the defendants still acting like one, and we too join in his motions and adopt his argument.

Judge Waterman: That frequently happens and we make the proper juxtaposition in our own minds.

[fol. 516] Mr. Galt: I should explain myself, if I may. I did not mean Suffolk County is ranged against us in the trial of this case. But there is one of the plaintiffs who is alleged to be and I believe is a citizen and voter from Suffolk County.

Judge Waterman: Do you wish to say anything in rebuttal?

REBUTTAL ARGUMENT BY MR. SAND

Mr. Sand: Very, very briefly, and only with respect to the significance in this case of the stay granted by Mr. Justice Stewart.

That was in a case in which there was challenged the apportionment of one house of a two-house legislature in a state in which there is initiative and referendum.

We said to the Supreme Court in our jurisdiction statement, and we say to this Court, that the issues presented in that case are very different, and that case is much different from this case, and one cannot reason from the fact that a stay was there granted, that that can be or should be done in this case.

Judge Waterman: Well, have we received all of the exhibits that have been introduced?

Mr. Sand: I think so, your Honor.

Judge Waterman: You mentioned earlier this morning something about more briefs from you. That was your [fol. 517] position at that time. Do you still wish to file more briefs?

Mr. Galt: Yes, especially in view of the turn in the case. We had expected an entirely different procedure, but even then we had planned to submit additional memoranda. We

promise not to overburden the Court with material which would be cumulative.

We will try our best to supply you with such details as may be useful to the Court.

The Court: We recognize the urgency of this case. What time do you think you want?

Mr. Galt: If your Honors please, I would suggest one week. We feel we can complete everything we have to put into that brief in one week, one week from today, with your Honors' permission.

Judge Waterman: If we grant him permission to put in anything, Mr. Sand, how much time do you want?

Mr. Sand: We will file a brief only if the State will file a brief. Otherwise we will rest on our present briefs. Certainly within a week. We would much rather that the Court read this large volume than our briefs. We make no independent or affirmative application for leave to file briefs. If such leave is granted to the State, we will file [fol. 518] whatever additional briefs within a week.

Judge Lévet: That is a rather iffy statement. I don't understand it.

Judge Waterman: Assuming we give him X time, how much X time do you want to file a reply brief?

Mr. Sand: Three days will be enough. But our position is that the case is fully submitted.

Judge Waterman: Yes, I know.

We are in doubt up here as to why we need any more briefs.

Judge Ryan: I think you prepared a splendid brief. I think all the parties have prepared splendid briefs. The arguments have been very able, very full, very helpful. There is a limit, you know, on judicial endurance in reading papers.

Mr. Sand: I will not file another brief, then.

Mr. Galt: We will file no brief under those circumstances. We accept the suggestion by the Court that it may be unnecessary.

Submission of Case and Reserving of Ruling on Motions to Dismiss

Judge Waterman: We will take the entire case under consideration and all the motions to dismiss we will, of course, not rule on now. We will reserve on those.

Needless to say, we are reserving judgment on the merits. We will do our best to comply with what we know is an [fol. 519] urgent matter.

We thank you for your courteous presentation and we thank you for a wealth of material that you have given us. We also thank you for your general enlightenment of us.

(Adjourned.)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 520] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ 1559

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

STIPULATION THAT CERTAIN DATA IS ACCURATE AND IS PROPERLY BEFORE THE COURT—Filed August 1, 1962

It Is Hereby Stipulated and Agreed by and between the undersigned, attorneys for the parties herein, that the following data is accurate and is properly before the Court. Each party, however, reserves the right to object to the relevance or materiality of this data or of any part thereof.

New York State Citizen Population by County and by Legislative District.

County	Citizen Population 1950 Census	1953 Apportionment No. of Senators	No. of Assemblymen	Citizen Population 1960 Census
Albany	234,068	1	2	269,088
Bronx	1,378,181	4	12	1,368,207
Broome	181,496	1	2	209,597
Erie	878,502	3	8	1,039,648
Kings	2,595,187	9	22	2,518,510
Monroe	475,037	2	4	571,029
Nassau	655,690	3	6	1,275,801
New York	1,795,726	6	16	1,584,069
Niagara	184,161	1	2	235,677
Oneida	216,486	1	2	259,330
Onondaga	334,453	2	3	414,770
Queens	1,484,214	5	13	1,733,081
Richmond	185,032	1	2	216,764
Suffolk	261,003	1	3	650,112
Westchester	601,682	3	6	782,179
Orange	148,429			179,873
Rockland	86,123	1	3	131,834
Delaware	43,863			43,237
Greene	28,082			30,931
Sullivan	39,359			44,434
Ulster	90,350	1	4	116,818

I (con't)

County	Citizen Population 1950 Census	1953 Apportionment No. of Senators	No. of Assemblymen	Citizen Population 1960 Census
Columbia	42,111			46,734
Dutchess	131,969			171,395
Putnam	19,668	1	3	31,006
Rensselaer	129,995			140,933
Washington	46,353	1	2	48,135
Schenectady	139,304			150,688
Schoharie	22,218	1	2	22,410
Essex	34,542			34,987
Saratoga	73,447			88,134
Warren	38,677	1	3	43,594
Clinton	52,443			71,389
Franklin	43,919			43,915
St. Lawrence	96,517	1	3	109,082
Fulton	50,135			50,847
Hamilton	4,055			4,220
Herkimer	59,693			65,218
Montgomery	57,610	1	3	56,287
Jefferson	83,539			86,606
Lewis	22,187			23,064
Oswego	75,935	1	3	85,356
Chenango	38,741			42,979
Cortland	36,786			40,685
Madison	45,624			54,262
Otsego	50,089	1	4	51,588
Cayuga	69,037			73,240
Tioga	29,826			37,610
Tompkins	57,853	1	3	64,227
Chemung	85,989			97,891
Steuben	90,761	1	2	97,176

52

[fol. 523]

I (con't).

County	Citizen Population 1950 Census	1953 Apportionment No. of Senators	No. of Assemblymen	Citizen Population 1960 Census
Ontario	59,269			67,410
Schuyler	14,066			14,974
Seneca	28,254			31,235
Wayne	56,662			67,344
Yates	17,461	1	5	18,552
Allegany	43,475			43,759
Genesee	46,690			53,416
Livingston	39,692			43,690
Orleans	29,306			33,845
Wyoming	32,275	1	5	34,534
Cattaraugus	76,993			79,548
Chautauqua	133,159	1	2	143,832

Total number of Counties - 62

523

II

THE VOTES CAST FOR STATE SENATOR BY COUNTY

County	1952	1954	1956	1958	1960
Albany	153,917	140,932	153,471	140,832	154,761
Allegany	20,579	15,929	19,900	15,516	19,890
Bronx	657,953	455,675	611,456	462,081	584,655
Broome	91,194	61,274	90,986	74,996	95,740
Cattaraugus	36,505	27,600	35,196	28,287	36,713
Cayuga	37,258	28,575	37,180	31,770	38,319
Chautauqua	66,141	46,849	65,039	51,360	66,556
Chemung	44,413	33,369	45,297	38,018	44,708
Chenango	20,376	16,209	20,339	16,746	20,402
Clinton	22,965	18,148	23,430	19,686	25,286
Columbia	23,940	19,555	24,307	20,498	24,940
Cortland	18,275	12,88-	17,888	13,728	18,369
Delaware	22,728	17,994	22,278	18,518	22,196
Dutchess	65,849	50,336	69,532	57,337	76,846
Erie	454,991	340,516	463,882	385,729	493,578
Essex	17,152	13,515	17,125	14,411	18,091
Franklin	19,082	13,545	18,470	15,492	19,580
Fulton	26,063	19,101	24,878	20,653	25,065
Genesee	23,682	18,287	23,885	18,560	25,247
Greene	17,636	15,328	18,296	16,189	18,619

524

County	1952	1954	1956	1958	1960
Hamilton	3,191	2,569	3,116	2,860	2,983
Herkimer	33,010	24,761	31,402	25,317	33,246
Jefferson	40,360	27,077	38,792	30,190	40,511
Kings	1,140,416	745,166	1,034,086	756,589	993,388
Lewis	10,707	8,098	10,437	9,145	10,825
Livingston	20,958	16,830	20,767	17,307	21,671
Madison	23,349	17,895	23,700	19,951	24,937
Monroe	273,679	213,953	278,656	237,936	292,480
Montgomery	33,007	26,475	31,000	25,882	31,176
Nassau	441,928	366,012	543,347	482,633	592,460
New York	779,527	520,721	692,151	502,173	648,785
Niagara	92,390	66,099	93,477	75,481	102,857
Oneida	115,597	93,071	116,187	98,637	124,413
Onondaga	185,807	144,845	189,931	171,886	200,208
Ontario	30,763	22,396	30,344	25,073	32,119
Orange	72,694	54,984	75,312	61,114	80,879
Orleans	15,739	12,691	15,534	12,721	16,052
Oswego	39,484	30,380	38,598	30,697	40,056
Otsego	26,644	21,257	25,480	21,312	25,635
Putnam	16,360	13,627	17,834	16,321	20,093
Queens	798,283	528,658	798,683	604,355	826,846
Rensselaer	77,885	68,530	76,364	67,619	76,909

SLS

II (con't)

County	1952	1954	1956	1958	1960
Richmond	85,551	58,244	84,802	67,969	90,108
Rockland	43,395	34,365	48,395	45,106	60,933
St. Lawrence	41,708	30,228	43,464	34,329	45,920
Saratoga	41,585	33,549	42,266	36,012	43,652
Schenectady	82,562	61,660	80,991	68,503	77,900
Schoharie	12,661	10,587	12,195	11,222	12,144
Schuyler	7,498	5,806	7,526	6,316	7,619
Seneca	14,170	11,264	14,216	12,359	14,584
Steuben	43,847	31,574	43,751	34,159	43,895
Suffolk	156,687	132,636	218,414	205,917	283,642
Sullivan	23,971	20,394	25,217	22,294	25,597
Tioga	15,232	10,889	15,287	12,457	17,565
Tompkins	25,283	17,451	25,520	21,220	25,929
Ulster	52,677	43,396	56,982	49,487	60,220
Warren	22,358	17,136	21,954	17,814	21,971
Washington	24,059	18,976	23,499	19,089	23,610
Wayne	28,858	21,669	29,135	24,167	31,012
Westchester	355,358	270,102	380,277	318,062	399,835
Wyoming	16,357	12,652	16,029	13,593	16,439
Yates	9,784	6,828	9,555	7,827	9,404

526

[fol. 527]

III

APPORTIONMENTS OF SENATE DISTRICTS UNDER 1894 CONSTITUTION

	1894	1907	1917	1943	1953
Largest District	156,748	202,650	194,470	300,938[1]	344,545[2]
Smallest District	86,507	106,103	115,575	129,666	146,666

1. Queens had a citizen population of 1,203,752 and was given four seats, making a citizen population of 300,938 per seat.

2. Bronx had a citizen population of 1,378,181 and was given four seats, making a citizen population of 344,545 per seat.

(27

IV [fol. 528]

The following apportionment would result if the New York State Legislature reapportioned the Senate under the present constitutional formula, on the basis of 1960 Census statistics.

County	Citizen Population	Senators	Citizen population per Senator
Bronx	1,368,207	4	342,052
Erie	1,039,648	3	346,549
Kings	2,518,510	7	359,787
Nassau	1,275,801	3	425,267
New York	1,584,069	4	396,017
Queens	1,733,081	5	346,616
		On basis of second ratio	
Albany	269,088	1	269,088
Monroe	571,029	3	190,343
Niagara	235,677	1	235,677
Oneida	259,330	1	259,330
Onondaga	414,770	2	207,385
Suffolk	650,112	3	216,704
Westchester	782,179	3	260,726
All other counties	3,539,285	17	208,193
Entire State	16,240,786	57	284,926

54

Apportionment year	Census year	Number of counties having assembly ratios equal to: Less than one	From 1 to 1½	From 1½ to 2	Two or more	Total
*	1960	38	6	3	14	61
1953	1950	40	5	4	12	61
1943	1940	38	7	4	12	61
1917	1915	31	8	10	12	61
1907	1905	29	12	8	11	60
1894	1892	21	15	9	14	59

* This is a projected apportionment, based upon 1960 Census figures and the present constitutional formula. No such apportionment has yet been carried out.

VI [fol. 530]

AVERAGE 1950 CENSUS POPULATION IN EACH ASSEMBLY DISTRICT

County	Total Number of Senate Districts	Total Number of Assembly Districts	Number of Senate Districts	Number of Assembly Districts in Each Senate District	1950 Citizen Population in Each Assembly District Average
Bronx	4	12	4	3	114,848
Erie	3	8	-	-	109,813
			2	3	97,612
			1	2	146,416
Kings	9	22	-	-	117,963
			4	3	96,119
			5	2	144,176
Monroe	2	4	2	2	118,759
Nassau	3	6	3	2	109,282
New York	6	16	-	-	112,233
			4	3	99,763
			2	2	149,643
Onondaga	2	3	-	-	111,484
			1	2	83,613½
			1	1	167,226
Queens	5	13	-	-	114,170
			3	3	99,018
			2	2	148,264
Westchester	3	6	3	2	100,280

530

[fol. 531]

VII

The following apportionment would result if the New York State Legislature reapportioned Senate and Assembly Districts under the present constitutional formula, on the basis of 1960 Census statistics.

County	Total Number of Senate Districts	Total Number of Assembly Districts	Number of Senate Districts	Number of Assembly Districts in Each Senate District	Approximate 1960 Population in Each Assembly District
Bronx	4	10	-	-	136,821
			2	3	114,017
			2	2	171,026
Erie	3	8	-	-	129,956
			2	3	115,516
			1	2	173,275
Kings	7	19	-	-	132,553
			5	3	119,929
			2	2	179,894
Monroe	3	5	-	-	114,206
			2	2	95,172
			1	1	190,343
Nassau	3	10	-	-	127,580
			2	3	141,756
			1	4	106,317
New York	4	12	4	3	132,006
Onondaga	2	4	2	2	103,693
Queens	5	13	-	-	133,314
			3	3	115,539
			2	2	173,308
Suffolk	3	5	-	-	130,022
			2	2	108,352
			1	1	216,704
Westchester	3	6	3	2	130,363

The following apportionment would result if the New York State Legislature reapportioned the Assembly under the present constitutional formula, on the basis of the 1960 census statistics.

County	1960 Citizen Population in Each Assembly District
Schuyler	14,974
Yates	18,552
Schoharie	22,410
Lewis	23,064
Greene	30,931
Putnam	31,006
Seneca	31,235
Orleans	33,845
Wyoming	34,534
Essex	34,987
Tioga	37,610
Cortland	40,685
Chenango	42,979
Delaware	43,237
Warren	43,594
Livingston	43,690
Allegany	43,759
Franklin	43,915
Sullivan	44,434
Columbia	46,734
Washington	48,135
Otsego	51,588
Genesee	53,416
Madison	54,262
Fulton & Hamilton	55,067
Montgomery	56,287
Tompkins	64,227
Herkimer	65,218
Wayne	67,344
Ontario	67,410

532

VIII (con't) [fol. 533]

County		1960 Citizen Population in Each Assembly District
Clinton		71,389
Cayuga		73,240
Cattaraugus		79,548
Oswego		85,356
Dutchess (2 districts)	Approx.	85,698
Jefferson		86,606
Saratoga		88,134
Orange (2 districts)	Approx.	89,937
Monroe (4 districts)	Approx.	95,172*
Steuben		97,176
Chemung		97,891
Onondaga (4 districts)	Approx.	103,693
Broome (2 districts)	Approx.	104,799
Nassau (4 districts)	Approx.	106,317*
*********NEW YORK STATE AVERAGE		108,272
Suffolk (4 districts)	Approx.	108,352*
Richmond (2 districts)	Approx.	108,382
St. Lawrence		109,082
Bronx (6 districts)	Approx.	114,017*
Erie (6 districts)	Approx.	115,516*
Queens (9 districts)	Approx.	115,539*
Ulster		116,818
Niagara (2 districts)	Approx.	117,839
Kings (15 districts)	Approx.	119,929*
Oneida (2 districts)	Approx.	129,665
Westchester (6 districts)	Approx.	130,363
Rockland		131,834
New York (12 districts)	Approx.	132,006
Albany (2 districts)	Approx.	134,544
Rensselaer		140,933
Nassau (6 districts)	Approx.	141,756*

VIII (con't) [fol. 534]

County			1960 Citizen Population in Each Assembly District
Chautauqua			143,832
Schenectady			150,688
Bronx	(4 districts)	Approx.	171,026*
Erie	(2 districts)	Approx.	173,275*
Queens	(4 districts)	Approx.	173,308*
Kings	(4 districts)	Approx.	179,894*
Monroe	(1 district)	Approx.	190,343*
Suffolk	(1 district)	Approx.	216,704*

* Assembly districts distributed among senatorial districts in conformity with the requirement: "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts in any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants." N.Y. Const., Art. III, § 5, Para. 4 (1894). The population in districts in the multi-member counties may vary due to the rule precluding the division of towns and blocks.

534

[fol. 535] IX

Basic Statistics for Counties and Metropolitan Areas of New York State—1962

(This material is found in Research Bulletin No. 4, annexed hereto and made part hereof, published in June, 1962, by the New York State Department of Commerce).

X

United States Census of Population
1960

New York—No. of inhabitants

United States Department of Commerce

Bureau of the Census

(This material is found in Exhibit "5" of the complaint, and is deemed part of this stipulation).

[fol. 536] XI

State of New York

State Aid to Local Government

Department of Audit and Control

Division of Municipal Affairs

Bureau of Statistic Services

September, 1961

State of New York, 1961 Annual Report of the Comptroller; State of New York, 1962 Digest of Annual Report of the Comptroller; and any other similar documents handed up to the Court herewith.

Leonard B. Sand, Attorney for Plaintiffs.

Leo A. Larkin, Attorney for defendants *Screvane, Mahon, Power, Crews,* and *Mallee.*

Bertram Harnett, Attorney for the defendant *Nickerson.*

Francis J. Morgan, Attorney for the defendant *Berman.*

George W. Percy, Jr., Attorney for the defendant *Leonard.*

Louis J. Lefkowitz, Attorney General of the State of New York, *Attorney pro se* and *for defendant Simon.*

TABLE I

SENATE-SEAT REMAINDERS IN ALL COUNTIES HAVING THREE OR MORE FULL RATIOS[a]

	1892	1905	1915	1925	1930	1940	1950	1960
NEW YORK CITY	92,444	153,874	182,839	373,618	558,945	515,837	435,652	707,547
Bronx	------	-------	9,564	146,914	177,803	1,134	241,905	68,943
Kings	58,264	48,702	151,701	58,148	161,306	175,241	38,566	244,798
New York	34,180	105,172	21,574	103,599	142,421	127,818	91,312	284,805
Queens	------	-------	-------	64,957	77,415	211,644	63,869	109,001
REMAINDER OF STATE	------	14,797	23,413	57,265	40,988	20,992	26,295	366,553
Erie	------	14,797	23,413	57,265	40,988	20,992	26,295	65,200
Nassau	------	-------	-------	-------	-------	-------	-------	301,353
CONSTITUTIONAL RATIO FOR APPORTIONING SENATORS*	115,817	141,260	161,190	193,356	221,811	248,027	284,069	324,816

a. Computed on basis of citizen population 1892-1950. LEGISLATIVE DOCUMENT (1950) NO. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14A-14B and 1960 citizen census figures supplied by the United States Bureau of the Census.

* The New York Constitution provides that the ratio for apportioning Senators shall be obtain by dividing the State's total citiz population by fifty. Consequently, a county that has three full ratios has six percent of the State's citizen population.

TABLE II.

SENATE RATIOS AND AVERAGES*

Year	Counties	Citizen Population	÷	Number of Senators	=	Population Per Senator
*1960	Six largest counties	9,519,316		26		366,128
	All other counties	6,721,470		31		216,822[a]
	Entire State	16,240,786		57		284,926
	Constitutional ratio	16,240,786		50		324,816[b]
1953	Five largest counties	8,131,810		27		301,178
	All other counties	6,071,639		31		195,859[a]
	Entire State	14,203,449		58		244,887
	Constitutional ratio	14,203,449		50		284,069[b]
1943	Five largest counties	7,233,558		27		267,910
	All other counties	5,167,771		29		178,199[a]
	Entire State	12,401,329		56		221,452
	Constitutional ratio	12,401,329		50		248,027[b]
1917	Four largest counties	3,913,622		23		170,157
	All other counties	4,145,893		28		148,068[a]
	Entire State	8,059,515		51		158,030
	Constitutional ratio	8,059,515		50		161,190[b]
1907	Three largest counties	3,417,651		23		148,594
	All other counties	3,645,337		28		130,191[a]
	Entire State	7,062,988		51		138,490
	Constitutional ratio	7,062,988		50		141,260[b]
1894	Two largest counties	2,292,967		19		120,682
	All other counties	3,497,898		31		112,835[a]
	Entire State	5,790,865		50		115,817[b]

*a = second ratio; b = first ratio. 1894-1953, computed from statistics published in LEGISLATIVE DOCUMENT (1950) NO. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14A-14B; and data on 1960 citizen population supplied by United States Bureau of the Census.

Fol. 538

TABLE III

SENATE DISTRICTS UNDER CONSTITUTION OF 1894

Explanation	Citizen Population Per Seat[a]							
	1894	1906[b]	1907	1917[c]	1935[d]	1943	1953	1960*
Largest District	156,748	246,187	202,650	194,470	272,614	300,938[e]	344,545[f]	425,267*
Smallest District	86,507	97,717	106,103	115,575	141,631	129,666	146,666	166,715*
Difference[g]	70,241	148,470	96,547	78,895	130,983	171,272	197,879	258,552*
Average[h]	115,817	138,489	138,489	158,030	213,280	221,452	244,887	284,926*
Percent of Variation[i]	60.6	107.2	69.7	49.9	61.4	77.3	80.8	90.7*

a. Tabulated from statistics published in LEGISLATIVE DOCUMENT (1950) NO. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14A-14B; and data on 1960 citizen population supplied by the United States Bureau of Census.

b. Held invalid as was the Act of 1916 for reasons relating to districting rather than to apportionment.

c. Also Act of 1916, which was held invalid. See b, supra.

d. Proposed but not passed.

e. Queens had a citizen population of 1,203,752 and was given four seats, making a citizen population of 300,938 per seat.

f. Bronx had a citizen population of 1,378,181 and was given four seats, making a citizen population of 344,545 per seat.

g. The smallest district subtracted from the largest district.

h. State's total citizen population divided by number of Senators.

i. The difference divided by the average.

* No apportionment Act yet passed.

[fol. 540]

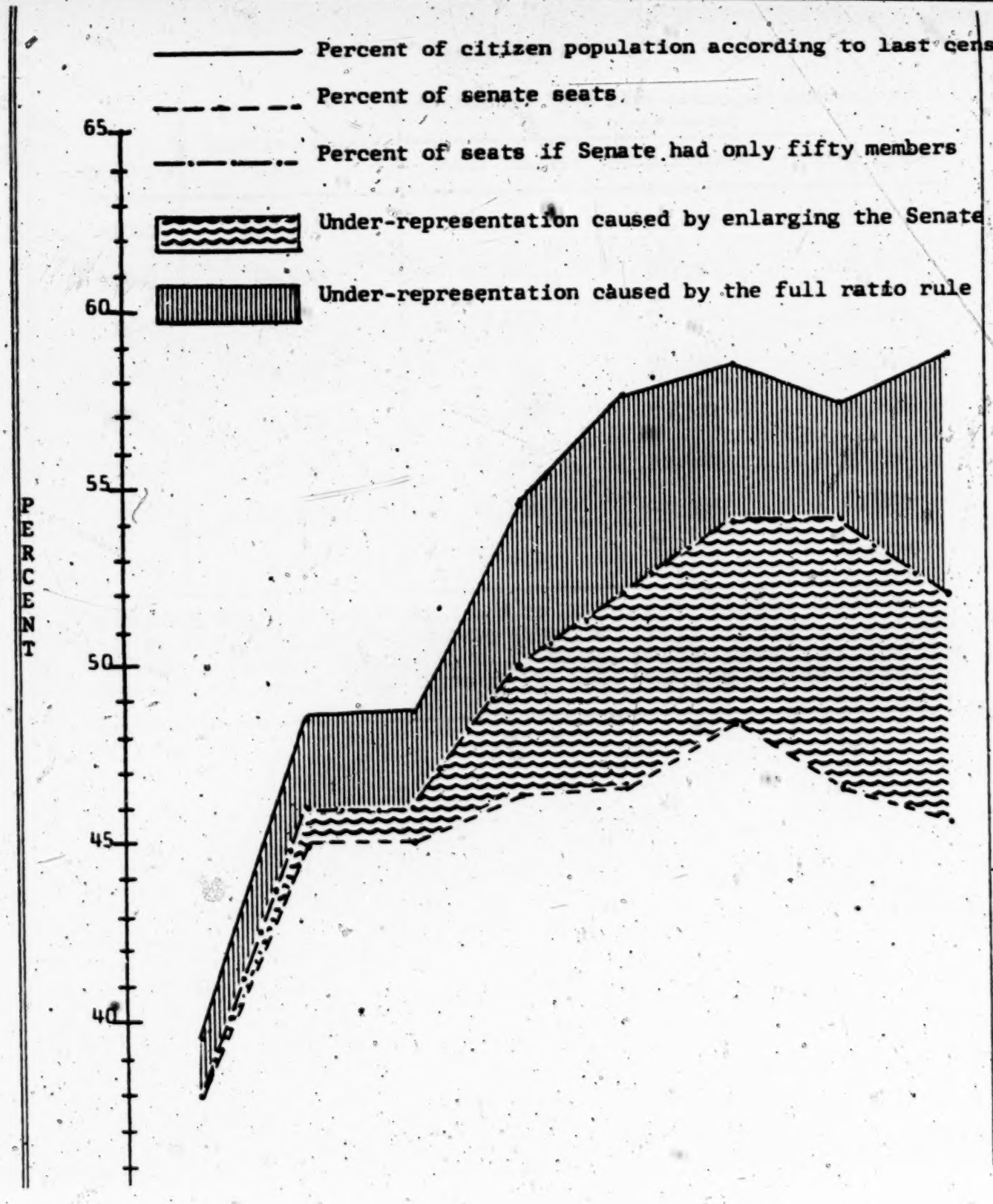
PLAINTIFF'S EXHIBIT 4

5-40

TABLE IV

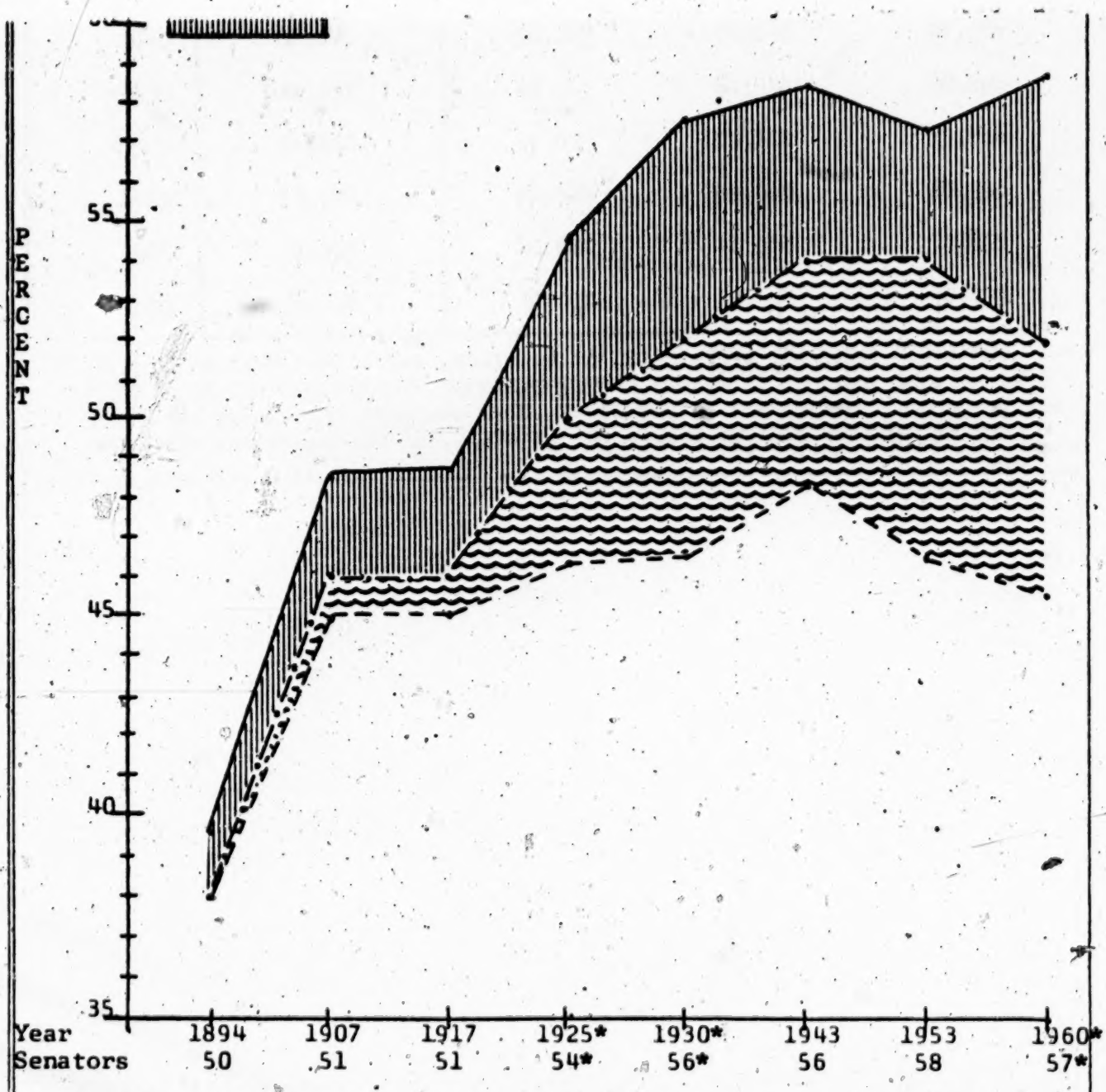
Apportionment	Percentage of citizen population and Senators in counties having*			
	Three or more ratios		Less than three ratios	
	Population	Senators	Population	Senators
*1960	58.6	45.6	41.4	54.4
1953	57.3	46.6	42.7	53.4
1943	58.3	48.2	41.7	51.8
*1935	57.4	50.0	42.6	50.0
1917	48.6	45.1	51.4	54.9
1907	48.4	45.1	51.6	54.9
1894	39.6	38.0	60.4	62.0

*All computations were made on the basis of citizen population statistics published in LEGISLATIVE DOCUMENT (1950) NO. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14A-14B; and data on 1960 citizen population supplied by the U. S. Bureau of the Census. The 1935 reapportionment was proposed but not passed.



[fol. 541]

PLAIN



*No reapportionment act passed. Apportioned on the basis of the census in conformity with In re Fay, 291 N.Y. 198 (1943). Citizen population used in all cases.

**Counties having three or more full senate ratios (i.e. 6% or more of the State's citizen population): Kings, New York (including Bronx) since 1894; Erie since 1905; Queens since 1925; and Nassau since 1960.

[fol. 541]

PLAINTIFF'S EXHIBIT 5

541

TABLE VIII*

Census	Constitutional Ratio	Average citizen population per Assemblyman in counties of		
		First Class	Second Class	Third Class
*1960	108,272	62,765	93,478	129,183
1950	94,690	57,648	87,390	112,477
1940	82,676	52,187	76,046	97,366
*1930	73,937	45,383	64,544	88,606
*1925	64,452	45,677	59,502	73,884
1915	53,730	41,424	44,660	60,998
1909	47,087	41,602	40,385	50,657
1892	38,606	36,010	32,452	40,733

*Computed from statistics published in LEGISLATIVE DOCUMENT (1942) No. 59 at 32-33; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14; and data on 1960 citizen population supplied by U. S. Bureau of the Census. No apportionment act was passed on the basis of the census of 1925 or 1930 or 1960.

TABLE X

Census	Percent of citizen inhabitants and of assembly seats in counties of the					
	First Class		Second Class		Third Class	
	Population	Seats	Population	Seats	Population	Seats
*1960	17.0	29.3	3.5	4.0	79.5	66.7
1950	18.3	30.0	4.9	5.3	76.8	64.7
1940	18.9	30.0	4.9	5.3	76.2	64.7
*1930	17.2	28.0	9.3	10.7	73.5	61.3
*1925	19.8	28.0	9.9	10.7	70.3	61.3
1915	20.0	26.0	11.1	13.3	68.9	60.7
1905	24.2	27.3	9.1	10.7	66.7	62.0
1892	22.4	24.0	10.1	12.0	67.5	64.0

*See note at end of Table VIII supra.

[fol. 544]

IN UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

PLAINTIFF'S EXHIBIT 8

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

No. 61 Civ. 1559

WMCA, INC.; R. PETER STRAUS; JOSEPH DE MAIO; EDWARD LIND; S. THOMAS DELANEY; EDWARD C. BROWN; JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York; EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County; LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County; WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWERS, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

AFFIDAVIT

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

R. PETER STRAUS, being duly sworn, deposes and says:

1. I am a plaintiff in this action and reside at 101 Central Park West in the City, County and State of New York. I am a qualified and registered voter in said City, County and State. I am also President of WMCA, Inc., a New York corporation which has its principal place of business in the City, County and State of New York. I submit this affidavit

in both my individual capacity and as an officer of WMCA, Inc. which is also a plaintiff herein. This affidavit is submitted as an appendix to the plaintiffs' opening brief.

2. The complaint alleges that a gross malapportionment of the New York State Legislature exists as between the rural and urban areas of the State. In the affidavit of Professor Ruth C. Silva, which is also being submitted at this time, it is shown that such malapportionment in fact exists. In this affidavit it will be shown that under-repre- [fol. 545] sentation of urban areas, specifically of New York City, has resulted in a consistent pattern of legislative action injurious to that City, those who live in it and those businesses which conduct their operations in that City. The statements contained herein are made on my best information and belief.

3. Historically, discrimination against New York City by the Legislature has taken many forms. But nowhere is the pattern more vividly displayed than in the distribution of "State Aid to Local Government." This aid accounts for more than half the annual budget of the State. In the last fiscal year (1961-62) State Aid amounted to $1,245,000,000.00.[1] The money is distributed under more than 70 individual aid programs, ranging from public schools (1961 budget: $769 million) to Control of Rabies in Wild Life (1961 budget: $21 thousand).[2] For each program the Legislature prescribes a particular formula under which the total appropriation is shared among the local governments. These formulas are often very complex. Taken together, they reveal only one consistent theme: in each case the particular principles underlying the allocation of funds tend to be those which produce the smallest yield for New York City.

---

[1] Digest of 1962 Annual Report of the Comptroller, State of New York, pp. 6, 7, 10.

[2] State Aid to Local Government. Department of Audit and Control, Division of Municipal Affairs, Bureau of Statistical Services, State of New York, September, 1961. pp. ii, 82. 1962 Annual Report of the Comptroller, State of New York. Local Assistance from State Appropriations distributed to Localities, Section 4, Exhibit C.

4. In 1961-62, State Aid to New York City under all programs combined amounted to $470 million.[3] This was 38 percent of the grand total. Since New York City's share of the State's population is 46 percent,[4] it is obvious that, man for man, the people of New York City share far less [fol. 546] in the annual bounty of the State than do their country cousins. Were New York City to receive State Aid in proportion to its population, its share last year would have been 108 million dollars greater than it was.

5. I do not suggest that the Legislature, in order to be fair, must match dollars precisely with people in the regional distribution of aid. Certainly the degree of need of the people of this State is not everywhere the same. But are the needy, the underprivileged, the deserving of aid so much more abundant Upstate as to justify the relatively meagre portion of the total aid budget committed to the people of New York City? Are the community services required by the people of New York City smaller proportionally than those required of communities Upstate? This would be very hard to prove. It is even more so if we examine the aid programs individually.

6. By far the greatest part of the entire State Aid budget is spent on public schools. In 1961-62 the total aid under this program alone came to 769 million dollars,[5] or 62 percent of *all* State Aid. New York City's share of this 769 million dollars for schools was 196 million,[6] or 25 percent.

7. Was this 25 percent share of State Aid for schools fair to New York City? Certainly the figure is a far cry from the City's *46* percent share of the total population of

---

[3] Digest of 1962 Annual Report of the Comptroller, p. 6.

[4] United States Census of Population, 1960. New York, Number of Inhabitants. U.S. Department of Commerce, Bureau of the Census, pp. 7, 29. Population New York City: 7,781,000. Population New York State: 16,782,000.

[5] 1962 Annual Report of the Comptroller, State of New York. loc. cit.

[6] Ibid.

the State. It is a far cry too from the City's 35 percent share of the State's public school enrollment.[7] Had New York City received the same proportion of school aid per pupil as the rest of the State it would have amounted to $273 million, or 77 million dollars more than the City did in fact get. Comparing these figures in another way, New York City received $197 in school aid for each student in its [fol. 547] public schools. The average for each student in the rest of the State was $314.[8]

8. On its face this enormous differential between what the State spends on the education of a child in New York City and what it spends on a child Upstate appears outrageously unjust. It is a figure cited more than any other by the City's public officials, by its civic organizations and in the editorial comment of its communications media to support the charge that Upstate New York employs its inflated voting power in the Legislature to "short-change" New York City. The fact that the education of an Upstate child is worth $117 a year more to the Legislature than the education of a child in New York City, the fact that for every dollar the Legislature bestows on a school child Upstate it can spare only 63 cents for a school child in New York City: these are facts which the parents and the taxpayers

---

[7] Education Statistics: New York State 1961-62 Estimates. Bureau of Statistical Services, University of the State of New York, August 1961. Page 5, Table 1. Estimated total enrollment for entire State: 2,843,000. For New York City: 996,000.

[8] State Aid to New York School Districts. State Education Department, University of the State of New York, December 1961, Page 25, Table 7. The comparative figures cited in this table are based not on public school *enrollments* but on "Weighted Average Daily Attendance", a figure reflecting the proportion of students actually enrolled who are in attendance on an average school day. This Attendance factor, which is applied to New York City's disadvantage in calculating school aid, is discussed in a later footnote. In connection with the comparative figures used in the table here cited, however, it makes even the $117 discrepancy in school aid between New York City and the rest of the State a *conservative* figure. Since average attendance in New York City's public schools is slightly lower than in the rest of the State, a comparison of State Aid per student based on enrollments would show an even greater discrepancy than that given here.

of New York City find more shocking than all other discriminations combined.

9. Just how does the Legislature justify these facts, facts which are neither contested nor in any way concealed? The answer, for what it is worth, is embodied in a maze of interlocking formulas whose detailed analysis would go far beyond the scope of this exhibit.[9] But there is no dispute as to what particular formula is responsible primarily for New York City's inferior share of total school [fol. 548] aid. 83 percent of all school aid is distributed under the so-called "equalization" program. Under this program, aid to each school district varies inversely with the amount of taxable real estate per student in that district. The theory underlying this formula is that the more real estate there is to tax in a community, the less help that community needs from the State in raising money for its schools.[10]

10. This theory easily works to New York City's disadvantage. The City has 42 percent of the State's taxable real estate.[11] It has only 35 percent of the State's public school students. The ratio of taxable real estate to school enrollment is thus higher in New York City than in the rest of the State. Under the "equalization" formula the City's relative share of school aid is therefore lower than Upstate New York's.

11. The flaws in the "equalization" theory have been pointed out repeatedly by spokesmen of the City. Briefly they are these:

---

[9] There are many State publications in which the basic formulas are spelled out and, in some cases, shown in their annual application to the respective school systems of the State. To cite a few: State Aid to Local Government, pp. 13-33, 36, 38-40, 42-44; Education Statistics New York State, 1961-62 Estimates; State Aid to New York School Districts.

[10] State Aid to New York School Districts, pp. 1, 2.

[11] Statement by New York City Comptroller Abraham D. Beame before Joint Fiscal Committees, New York State Legislature, February 15, 1962, p. 1.

A. In every community of the State, including New York City, taxes on real property are the principal source of revenue for all public services and not just schools. The cost of these other services is proportional to the City's total population and not to its school enrollment. And in terms of its total population, New York City is not more favored with taxable property than the rest of the State. Quite the opposite, with 46 percent of the State's people, the City has only 42 percent of its real estate wealth. If the only function of a local government were to operate a school system, then the ratio of real estate to school enrollment *might* be a more defensible criterion for allocating school aid. Since this is not the case, the "equalization" formula merely creates a dense fog of misleading mathematics behind which the Legislature quietly divests the City's school children of 77 million dollars a year.

B. Oddly enough, in the more refined applications of the "equalization" formula, the Legislature has made it possible for a sharp decline in the City's relative share of the State's real property to produce not a rise but a further decline in its share of school aid. In 1942, 61 percent of the State's taxable property lay in New York City, but the City then received only $20 less per student than did Upstate New York. In 1962, [fol. 549] with only 42 percent of the taxable property, New York City received 117 dollars less.[12]

C. Even if real estate wealth per student could be otherwise accepted as a definitive test of a community's ability to support its schools, state-imposed ceilings on the rate of real estate taxation would minimize the City's supposedly superior local revenues. The Legislature's long history of frustrating City efforts to

[12] Ibid. According to Comptroller Beame, during the same 20 years in which the gap in school aid per student between New York City and the rest of the State multiplied six times, real estate values outside the City rose 273 percent. During the same period real estate values in New York City rose only 75 percent. See also Remarks by Mayor Robert F. Wagner before Joint Fiscal Committees of the Legislature, February 15, 1962, p. 3.

increase these revenues is a matter of record. In view of this record, any argument for lower school aid based on the City's assumed advantage in local tax resources collapses entirely.

12. For these and other reasons the "equalization" formula for determining school aid amounts to a prescription for generating inequality between the school children of New York City and the rest of the State at the rate of well over a hundred dollars a head each year. The formula contrives a glamourous assessment of the City's resources with no foundation in fact. Of all the possible factors which might be brought to bear on a calculation of the City's needs, the formula ruthlessly excludes or minimizes nearly all which might operate in the City's favor. And, under the guidance of the inflated Upstate majority in the Legislature, this same formula is skillfully stocked with every possible provision which might operate in favor of the rest of the State. A formula whose mathematical complexity grows with every passing year, it nevertheless conveys a message which any schoolchild in New York City can understand. To that schoolchild it says: "For every dollar that a child Upstate is worth to the State of New York, you are worth 63 cents." [13]

---

[13] As an example of how even the short ration prescribed for New York City under the "equalization" formula can be still further reduced by Legislative ingenuity, the use of "Weighted Average Daily Attendance" rather than school registration as the basis for calculating student population deserves notice. School attendance in New York City happens to run somewhat lower than it does in the rest of the State. For 1961-62 preliminary estimates showed attendance at 89 percent for the City's schools, 92 percent for the rest of the State. By using "Weighted Average Daily Attendance" rather than school enrollment as the basis for school aid, Upstate New York was thus granted an additional three percent advantage in school aid beyond that already conferred by the basic "equalization" formula. By this provision alone the gap in school aid between New York City and the rest of the State was widened by nearly $10,000,000. In no way, of course, do the City's slightly lower attendance figures reduce its costs of maintaining classroom space, heating or lighting or paying teachers' salaries. Education Statistics New York State, 1961-62 Estimates, p. 6, Table 1; p. 7, Table 3.

Statement by Mayor Robert F. Wagner on City's Legislative and Fiscal Program Outline and Comments. October 8, 1961, p. 11.

[fol. 550] 14. On highways in 1961-62, the Legislature appears to have spent a total of 396 million dollars.[14] By its very nature, most of the highway mileage is outside New York City. Most of the jobs created by the highway program are jobs Upstate. And as a means of transportation for the average citizen, these highways are significant primarily Upstate.

15. The people of the city cannot on these accounts quarrel with the State highway program. But they may legitimately point out that *they* have a transportation facility which is in many ways a counterpart of those splendid highways so generously endowed Upstate by the Legislature. This, of course, is the City's transit system. Just as State-financed highways enable Upstate New Yorkers to get [fol. 551] around *their* sector of the state swiftly and cheaply, the City's transit system enables nearly eight million people to do the same in *this* sector of the State. Nevertheless, the Legislature has never spent a dollar towards the huge cost of building and operating City transit.[15]

---

[14] Digest of Annual Report of Comptroller, pp. 6, 7, 10. Annual Budget Message of the Governor, 1962-63, pp. M-13, M-20, M-21, M-100, M-101. State expenditures on highways are difficult to pin down on an annual basis, since the money is distributed throughout a large number of spending categories in each of the three principal divisions of the State budget. Moreover, the figures in the Governor's message, submitted before the conclusion of the fiscal year, involve estimates of what would be spent during the remainder of that year, whereas the Comptroller's report, dated after the conclusion of the fiscal year, presumably gives more or less final figures. The Comptroller's Digest, however, does not assemble all the components of highway spending in the same fashion as the Governor's Budget Message to produce a grand total. Neither in the figures provided by the Comptroller's Digest nor in the Governor's Budget Message is it clear just how the Governor's total of 396 million dollars for State spending on "highways and highway safety" is arrived at, but I have no reason to doubt the accuracy of the Governor's estimated total for the purpose of the general statement about the over-all dimensions of the State highway program made in the text above.

[15] This does not of course interfere with the Legislature's prescribing fiscal policy for the transit authority, interdicting any subsidy for its operations by the City or even requiring the City to go to Albany for enabling legislation before it could tear down the Third Avenue El.

16. Of the nearly four hundred million dollars spent by the State for highways in 1961-62, 74 million came under a State Aid program, the fourth largest aid program of all.[16] Though the program is called "Highways", it does encompass ordinary roads and city streets as well. New York City got a share of this aid. But, in spite of the fact that nearly half the people of the State live along the City's streets, the Legislature has found formulas for this program which give New York City barely 18 percent of the total. Upstate localities got the rest.[17] As for the remaining third of a billion dollars spent by the State on highways without any local contribution last year, the overwhelming majority of that money was spent of course beyond the City's line.

17. The City cannot, of course, expect to share equally with the rest of the State in highway appropriations. Admittedly, its highway needs are not that great. Let's consider, however, a State program under which the City's needs far overshadow those of the rest of the State combined: housing. In this case, the total aid program of the State in 1961-62 was 21 million dollars. New York City, to be sure, received the lion's share of this (16 million).[18] But even had the entire 21 million dollars gone to the City it could hardly compensate the City's taxpayers for the huge [fol. 552] contributions *they* make to far bigger programs whose benefits accrue primarily Upstate.[19]

18. Though the City receives 75 percent of all State Aid for housing, this can hardly strike the City's people as generous when the total aid budget is so unreasonably small. As they survey the splendid expanse of State-fi-

---

[16] Digest of Annual Report of Comptroller, State of New York, p. 6.

[17] Ibid. State Aid to Local Government, pp. 65-71.

[18] Digest of Annual Report of the Comptroller, State of New York, 1962, p. 6.

[19] Figures on the relative contribution of New York City to the State's total revenues are presented *post*. According to these figures, New York City's taxpayers contribute *more* than their proportionate share of total State revenues.

nanced highways beyond their City line, as they contemplate the gray and growing expanse of the slums within it, the City's people find it hard to understand a State budget which allows twenty times as much money for those highways as it does for the roofs over the heads of nearly half its people.

19. As a general rule, with very few exceptions, New York City's share of State-aid programs is highest when the total budget of the program is least. As a case in point: aid for mental health. The total appropriation in 1961-62 was $13,800,000. Of this New York City received $10,100,000, or 74 percent.[20] But though this percentage seems high, it was really low in comparison with the City's mental health needs. And it was kept low by the kind of arbitrary ceiling which the Legislature almost always imposes on any program, however small, under which the City's share figures to be high.

20. This is how it works. The basic formula for Mental Health Aid requires the State to pay its communities for half the cost of mental health services. In the case of New York City, however; this formula is defeated by a flat limit on the amount of aid per resident which any community can receive.[21] Because of this limit New York City receives far *less* than half its mental health costs from the [fol. 553] State. Because of the per capita limit, New York City in 1961-62 received nearly three million dollars less than it would have been entitled to under the 50-50 formula. Under the City's 1962-63 budget for mental health, the per capita limit would deprive New York City of nearly five million dollars in State Aid.[22]

---

[20] 1962 Digest of Annual Report of Comptroller, State of New York, p. 6.

[21] State Aid to Local Government, p. 63.

[22] Report by Marvin E. Perkins, M.D., New York City Commissioner of Mental Health Services, July 5, 1962. See also Statement of City Comptroller Beame before Joint Fiscal Committees, p. 4; Statement by Mayor Wagner on City's Legislative and Fiscal Program: Outline and Comments, p. 16.

Besides New York City, 31 counties in the State have mental health programs to which the State contributes. Of these counties only one (Westchester for three months in 1962) has ever exceeded the per capita limit at which State sharing of mental health costs ceases. Both Westchester and Erie counties, however, currently report that they would increase their mental health expenditures if the State were to remove its per capita limit on shared spending. On July 17, 1962, Governor Rockefeller announced that he would ask the Legislature in 1963 to remove the per capita limit on matching mental health funds. Whether the legislature would honor such a request remains to be seen. New York Times, July 18,

21. What is seen here is a typical feature of State Aid formulas. When the aid program deals with a public need felt to the highest degree in New York City, arbitrary limits are often set on how much aid a particular community (i.e. New York City) can get.

22. Another example of this is State spending for victims of tuberculosis. For the rural areas of New York, the State operates tuberculosis care centers entirely out of State funds. The cost of these centers was nearly five million dollars in fiscal year 1961-62.[23] For the *urban* communities of the State (and this means primarily New York City), the State pretends to share *half* the cost of patient care with the local government.[24] Here again, however, a further provision of the aid formula destroys even the State's pretense of paying *half*.

23. As a shining example of how the Legislature can give with one hand and take away with the other, the exact language of the aid provisions deserves quotation:

> "For local charges—50% of the per diem patient cost of care and treatment; *reimbursement not to exceed $5.00 per patient per day.*" [25]

In point of fact it costs New York City $22 a day to maintain a tuberculosis patient in a hospital.[26] The State's five dollar a day reimbursement comes to less than *23* percent of this cost, a far cry from the 50 percent sharing proclaimed as the intent of the program, a far cry from the 100 percent paid for the care of rural patients at the Upstate centers. Were New York City in fact reimbursed for even 50 percent of its costs for tubercular care, this would bring more than five million dollars in further State Aid to [fol. 554] the City.[27]

24. No aid program which might confer a special benefit on New York City is so small as to escape the vigilance of rural New York's watchdogs in the Legislature. Aid for Probation Services to take an example, amounts to barely a million dollars a year for the entire State. It is less than the State collects in one morning from the paychecks of New York City. Nevertheless, at the time when the Legis-

---

[23] Executive Budget for Fiscal Year 1962-63, p. 374.

[24] State Aid to Local Governments, p. 60.

[25] Ibid.

[26] Statement of Comptroller Beame before Joint Fiscal Committees, pp. 4, 5.

lature finally acknowledged that probation services deserved State support, there was a real risk that under any aid formula based on need, New York City would get most of the money. It wasn't *much* money, to be sure. Here's how the Legislature went about making certain that the City's benefits under the program are held in check:

A. State Aid is granted only for *expansion* of probation services since the program went into effect. Since New York City was a pioneer for the entire nation in this kind of service, it had a substantial program already in being when the State began making its grants. As a result, the City's pre-State-aid budget for probation services is deducted from its current budget before the State begins to share any of the costs. Since probation services hardly existed in the rest of the State before the aid program began, virtually the entire current budgets in most other communities represent "expansion". In these communities, therefore, the State pays a share of nearly *all* the costs.

B. The basic formula for sharing these costs is, as usual, 50-50. New York City, however, is singled out for a flat ceiling on the total amount it can get, a kind of ceiling absolutely unique even for State Aid in New York. The aid allotments earned by all the rest of the State are first added up. That total then becomes the ceiling on what New York can get.

C. A further provision authorizes the State to share 80 percent of the costs for counties in "special need" of probation services. Exactly *five* of the sixty-two counties of the State are excluded from this provision. They are, of course, the five counties which make up New York City.[28]

25. Because of this curiously-contrived ceiling, the State pays nothing like half the cost of New York City's proba-

[28] State Aid to Local Governments, p. 64.
Statement of Comptroller Beame before the Joint Fiscal Committees, pp. 2, 3.
Statement by Mayor Wagner on City's Legislative and Fiscal Program: Outline and Comments, p. 21.

[fol. 555] tion services. In 1961-62, in fact, the figure was 28 percent.[29] Upstate, however, the State paid as much as 80 percent of probation costs and never less than half. Here again, need is the criterion of aid for the rest of the State but not for New York City.

26. With the State's aid program for youth services, we return to a more conventional technique of limiting New York City's share. Again the basic aid formula is 50-50. Again there is a flat ceiling based on total population.[30] Again the notorious need of New York City for a particular program is ignored. In this case the arbitrary ceiling reduces the State's share of costs to 37 percent. The loss to the City: $680,000.[31]

27. A noble and unique exception to the long roll of State Aid programs, each with its own blueprint for underpaying New York City, is social welfare. This is, first of all, a *big* program. In 1961-62, the State paid out 181 million dollars under it.[32] The money goes to local communities on the usual basis of evenly sharing the costs. But, in spite of the fact that this arrangement gives New York City nearly two-thirds of all the money in the program, there are no arbitrary ceilings, no elaborately-contrived provisions for reducing the City's natural share.[33]

28. By any standard, therefore, the State's welfare program is certainly fair to New York City. It may produce a fair amount of grumbling Upstate. It may evoke angry speeches in the Legislature from rural members loath to find New York City getting the biggest share of any major appropriation. But, whatever resentment this may stir among the Upstate powers in the Legislature, the City's equitable treatment under the welfare program has a

---

[29] Statement of Comptroller Beame before Joint Fiscal Committees, p. 3.

[30] State Aid to Local Governments, pp. 76, 77.

[31] Statement of Comptroller Beame, p. 5.

[32] Digest of Annual Report of Comptroller, State of New York, 1962, p. 6.

[33] State Aid to Local Governments, pp. 49-55.

[fol. 556] unique kind of guarantee. For the State's welfare program is in turn supported by equal amounts of Federal Aid. To qualify for this Federal Aid, the State's program must meet strict requirements. Were the kind of discrimination against New York City found in other State Aid programs extended to Welfare, it could imperil the State's own receipts from the Nation.

29. Another State program under which New York City might at first glance appear to be doing reasonably well is Per Capita Aid. The total budget in 1961-62 was 100 million dollars. New York City, with only 46 percent of the people of the State, received 53 percent of this Per Capita Aid.[34] Can the City complain about that? In point of fact, it can.

30. Per Capita Aid has an unusual history. From 1920 to 1946, the State allowed local communities to keep a part of the major State taxes collected within their respective boundaries.[35] It was in effect an arrangement under which the local government and the State each imposed a levy on the same tax base, and the State acted as the collecting agency for both. Along with the real estate tax, these shared State taxes made up the bulk of all local taxes. There was one problem, however, with the shared taxes. Unlike real estate levies, which are fairly stable sources of revenue from year to year, receipts from the shared State taxes varied sharply with changes in the general economy.[36]

---

[34] Digest of Annual Report of the Comptroller, State of New York, p. 6. New York City's Per Capita Aid is currently figured on the basis of its population under the 1953 census, which was then 52 percent of the State's. This accounts in part for its relatively high share of the total aid.

[35] State Aid to Local Governments, pp. 1-12.

[36] Ibid.
Remarks by Mayor Wagner before Joint Fiscal Committees, pp. 5, 6. Statement by Mayor Wagner on City's Legislative and Fiscal Program: Outline and Comments, pp. 12-14.
Among the most heavily productive State taxes have been those on personal income, corporate income and net profits of unincorporated businesses. All of these are, of course, very sensitive to

[fol. 557] 31. In 1946, accordingly, the Legislature replaced the shared taxes with a State Aid program which would guarantee local governments a predictable revenue each year and thus make local budgeting more efficient. No particular community was expected to profit, or be hurt, by the switch. The idea was that Per Capita Aid would grant each community roughly what it had been earning from shared taxes but without the annual ups and downs which the State was obviously better able to absorb.[37]

32. For New York City, however, the swap has turned out badly. Aid per capita remains as it was 16 years ago, a fixed $6.75. During that period inflation alone has sharply reduced the real value of the aid. Meanwhile the shared taxes which Per Capita displaced have soared enormously. If New York City were still sharing State taxes as it did before 1946, those taxes would have brought in 155 million dollars last year. That is 102 million more in fact than the City received in Per Capita Aid.[38]

33. There is nothing to suggest that, in the switch from shared taxes to Per Capita Aid, New York City was the victim of an Upstate plot. The change-over was never intended to produce any basic change in the long-range revenues of local communities. In the case of New York City, however, it has done exactly that. Year after year, City officials have gone before the Legislature to plead for an upward adjustment of Per Capita Aid to compensate them for their lost receipts from shared taxes. These pleas have gotten nowhere.

---

economic developments from year to year. Since the State does not allow local governments to run operating deficits, a major decline in shared-tax receipts could therefore create a major fiscal crisis for even the most carefully budgeted community.

[37] The State in 1946 had a very large surplus. Moreover, unlike the local governments, the State had no higher authority to restrict its borrowing powers if the surplus were dissipated.

[38] Remarks of the Mayor before Joint Fiscal Committees, p. 5. Mayor's Statement on City's Legislative and Fiscal Program, pp. 12-15. Message of the Mayor, City of New York, to the Board of Estimate and the City Council, submitting the Executive Budget for the fiscal year 1962-63, April 19, 1962, p. 7.

34. From the foregoing analysis of State Aid a vivid pattern of discrimination against New York City emerges. This discrimination is not universal. Often, it is quite [fol. 558] subtle. It tends, oddly, to be most blatant where the stakes are least. Sometimes, as in the case of Per Capita Aid, it may even have begun by accident. But there is nothing accidental today about the Legislature's refusal to help the City make up its lost revenues from shared taxes. Nor is there anything accidental in the cunning calculus of school aid: the so-called "equalization" formula for disinheriting by degrees the children of New York City.

35. By ruthlessly employing its vast arsenal of discriminating formulas the Legislature has opened up a State Aid gap between New York City and the rest of the State amounting to nearly a third of a billion dollars a year—this in spite of the fact that the respective populations are almost equal.[39]

36. Could this neglect by the State stem from any failure on the part of New York City to carry *its* share of the burdens of the State? Not very likely. Though New York City has only 46 percent of the State's population, at least half of the State's taxes are collected here.[40]

---

[39] Digest of Annual Report of Comptroller, p. 6.

[40] The contribution of the City to total State revenues is a matter of continuing controversy among officials of the respective governments. According to correspondence between the State Department of Taxation and Finance with the City Comptroller's Office in 1958 and the City's Budget Bureau in 1960, the percentage of *individual* taxes paid by *residents* of New York City was approximately *49* percent of the State's total for both years. Excluded from this calculation of the City's contribution, however, were the taxes paid by *non-residents of the State* on business activities conducted in New York City. The City contends that, assuming the State has any justification for taxing these non-residents at all, it is for public services (police and fire protection, maintenance of streets and sewers, etc.) financed entirely by the City and not by the State. Since the City is asking here not for the tax revenues generated by these non-residents but only for the credit of having made those State revenues possible, it does not seem unreasonable to include the taxes collected by the State from Connecticut and New Jersey people working in the City among the State taxes for

37. When compared in fact to the high tide on which their taxes flow North to Albany, the trickle of State Aid which comes back across the City line is particularly infuriating to the taxpayers of New York City. For every dollar which the State collects in New York City, only *38* cents returns as local aid. By contrast the Upstate taxpayer knows that *65* cents out of every dollar *he* pays will return to finance the roads and bridges and schools and hospitals of the community in which he lives.[41]

38. Just what exactly entitles that Upstate New Yorker to this kind of deal? It cannot be greater need. New York City may have some very rich people and highly paid execu- [fol. 559] tives, but it also has, in far greater numbers, some of the lowest paid workers in the nation. The income of the City's rich, though profitably taxed by the State, brings no direct revenues for our local government. As for the City's supposedly unlimited supply of taxable real estate, it has already been shown to be a myth. In this kind of wealth, Upstate New York is now far more heavily endowed than the City.[42]

---

which the City can claim honor. If those revenues *are* included New York City's contribution rises to 55 percent. Even if these contributions by out of State residents are *not* counted to the City's credit, however, 49 percent is a deceptive figure for the contribution of the City's residents to the State's revenues. For the six percent contributed by out of State residents should be deducted from the total and New York City's 49 percent compared with 94 percent of the State's revenues rather than 100 percent. In that case the contribution of the City's residents is at least 52 percent of the contribution by all residents of the State, even if we assume that tax revenues Upstate contain no component of non-resident taxation. Bernard Culloton, Deputy State Commission of Taxation and Finance, to Winthrop L. Schnizer, Chief Accountant, Officer of New York City Controller, December 10, 1958. Joseph H. Murphy, Commissioner of Taxation and Finance of New York State, to William Shea, then Assistant Director of the Budget of New York City, March 1, 1960. John A. McInnis, Research Unit, City Bureau of the Budget, to Martin Plissner, Research Director, WMCA, July 13, 1962.

[41] Statement of Comptroller Beame before Joint Fiscal Committees, pp. 1, 2.

[42] Cf. *ante*, pp. 5, 6.

[fols. 559-562] 39. Why then the plain dollars and cents discrimination against eight million people in New York City by the Legislature of New York? I submit that this is largely due to the system of apportioning that Legislature so fully documented by Professor Silva. It is this system which deprives the people of New York City of their rightful influence upon the lawmaking power of the State. It is this system which leaves them relatively unprotected against the self-serving enactments of an inflated upstate majority.

40. New York City's short ration of State Aid is made doubly painful by State-imposed limits on other potential sources of City Revenue. Constitutional provisions severely restrict the City's borrowing capacity for capital expenses. Further provisions, as we have seen, restrict the City's ability to finance its running costs by taxing property.[43]

41. Even when taxing real estate to the full Constitutional limit, the City therefore falls far short of meeting its vast budgetary requirements. New York City is consequently forced to levy a variety of other taxes without parallel anywhere else. By comparison to other municipalities, the total is staggering. Non-property taxes in New York City amount to 90 percent of all such taxes levied in New York State. Incredible as it may seem, they amount to a third of all the local non-property taxes collected in the entire nation.[44]

42. Burdensome as this taxation may be, the burden falls entirely upon the people of the business community of New York City. It might be supposed, therefore, that the Legislature—having stinted the City on State Aid—would be sympathetic to the City's abiding quest of compensating revenues from local sources. But the record shows that this is not the case.

---

[43] Wallace Sayre and Herbert Kaufman, Governing New York City, New York, 1960, pp. 50-52, 560-562.

[44] Governmental Finances in 1960, Federal Bureau of the Census, Washington, 1961, p. 16.
Special Report on Municipal Affairs by the Comptroller, State of New York, 1960, p. 3.

43. Having no inherent authority to tax, New York City can only impose such taxes as are authorized by the Legislature. But, among the many kinds of high-yield taxes which might be authorized aside from those on property, the State has reserved to itself nearly all of those which governments find easy to administer and comparatively inoffensive to the public.[45]

44. Among the non-property taxes allowed the City, the only highly productive levies are the retail sales tax and the tax on business transactions. Of these the sales tax is far the more productive. But the high return of the sales tax has been achieved only by tripling its rate during the generation since its inception. Because this tax applies to many necessities of life as well as luxuries and because it falls in appreciable amounts upon the poorest citizens, it is generally considered among the least popular of major taxes for any given yield. Even when exacting this tax, however, to the maximum degree permitted by the State, the City falls far short of meeting its budgetary needs.[46]

45. To make up the difference City administrations have to exercise great ingenuity. As the cost of municipal services mounts each year, the pursuit of fresh sources of revenue becomes increasingly desperate. But, in requesting fresh grants of taxing power from the Legislature, New York City's elected officials have received little support for

---

[45] Sayre and Kaufman, *op. cit.*, pp. 560-562.

David M. Ellis, James A. Frost, Harold C. Syrett and Harry J. Carman, A Short History of New York State, Ithaca, 1957, pp. 429-430.

Warren Moscow, Politics in the Empire State, New York, 1948, pp. 217-219.

Most conspicuous among these areas of taxation are the personal income, corporation and unincorporated business taxes in which the City did share before 1946, the gasoline tax of which it still receives a small share, the pari-mutuel tax from which it once received a share and the stock transfer tax. The City's claim to a restored share in the pari-mutuel tax at Aqueduct and a share in the stock transfer tax will be discussed presently.

[46] Statistical Guide for New York City, Department of Commerce and Public Events, City of New York, 1961, p. 59.

Sayre and Kaufman, *op. cit.*, pp. 50-52, 560-562.

those measures which they consider relatively acceptable to the people of the City.[47] Instead they have repeatedly been granted authority to impose taxes which are well known to be especially odious to the City's public at large.[48]

46. The City's unhappy experience over the years with tax proposals to the Legislature is not cited here as an instance of *discrimination*. The request taxing powers denied the City are not powers enjoyed by other local governments in the State. Nevertheless, New York City's revenue requirements are entirely unique, for its very size makes it a kind of local government without parallel elsewhere in the State or for that matter in the nation. New York City is the third largest city in the world. It has twice the population of any other city in the Western hemisphere. It has more people than 42 of the 50 states. It has fourteen times the population of any other city in New York State.[49]

---

[47] 1962-63 Budget Message of the Mayor, p. 9.

A current example of the Legislature's rejection of major city tax requests is the commercial occupancy tax solicited once again this year by the City's Board of Estimate. A graduated tax on the rental and use of commercial space, its estimated yield was 24 million dollars. By contrast with many other taxes authorized by the State, this would have been imposed on a class of taxpayers comparatively more able to support the burden and in a manner proportioned to the degree of this ability. The City was unable to muster the votes for its passage by the Legislature.

[48] Among these taxes, the so-called "nuisance taxes," are those on payrolls, on auto-use, on overnight parking, on taxi rides and on draught beer served in taverns. All except the payroll tax are of relatively small yield. The payroll tax is regarded by the City as unworthy of a Twentieth Century government: it is a straight percentage tax on wages, paid by the worker. It is thus in effect an income tax imposed only on wage-earners and without the graduated principle in both Federal and State income taxes which proportions the tax burden to an individual's ability to pay. As for the auto-use and taxi taxes, both have been tried and evoked such general resentment that no government responsive to public opinion could have retained them. There is good reason to believe that imposition of the tax on draught beer would produce the same response. As for the tax on overnight parking, the City regards this as unenforceable, a judgment which seems to agree with common sense.

[49] World Almanac, 1962, pp. 84, 250-253.

47. Because of its incomparable size, public services are required of New York which are on an entirely different scale from those found elsewhere in the State. In view of this, reasonable proposals by the City to secure its own welfare at its own expense would seem to merit the automatic support of the Legislature. Its failure to grant such support is one example of how New York City's under representation can lead to neglect of its wishes even when they in no way affect the interests of the rest of the State.

48. That New York City's money problems are grave is plain to any informed citizen. These problems affect nearly half the people of the State. They are a proper concern of the Legislature. Were that Legislature truly responsive to the needs of New York City, there might at least be some thought given to the sharing of certain State revenues collected entirely in New York City.

49. One of these is the stock transfer tax. In fiscal 61-62, this tax brought 83 million dollars to the State. All of this money was realized from sales conducted on the stock exchanges located in New York City. These exchanges received many essential services from the City, few from the State. Nevertheless, the Legislature has repeatedly rejected City pleas for a share of the tax revenues collected by the State.[50]

50. The Legislature's traditional insensitivity to New York City's unique local tax requirements is one easily

---

[50] Statement by Mayor Wagner on City's Legislative and Fiscal Program: Outline and Comments, p. 24.

Services of a comparable order to those furnished the stock exchanges are also provided by the City at substantial expense to Aqueduct Race Track. These include police and fire protection, sanitation services and maintenance of streets and sidewalks. In the case of Aqueduct, the City even went so far as to build a separate subway extension to the track. Nevertheless the City gets no share in the substantial State tax levied on the pari-mutuel handle. In this particular case, a policy of tax sharing once practiced by the State has been terminated. Were it still in force, New York City estimates that it would receive approximately seventeen million dollars a year. The City has repeatedly asked the Legislature to reinstate local sharing of the pari-mutuel tax. The Legislature has repeatedly refused.

shown consequence of the City's under-representation and hence its reduced influence in the lawmaking body of the State. Discrimination against the City in allocating the tax revenues of the State itself is still another. But abuses by Upstate New York of its excessive voting power in the Legislature are not confined to State aid and taxing powers. The following is an example of how Upstate New York has taken advantage of the City through other kinds of legislation.

51. In 1923 the Legislature defined the condemnation powers of the City of New York as they exist to this day. Under this law, for all kinds of condemnations except one, the City brings action before a Justice of the State Supreme Court. The exception applies to condemnations by the City of property for watersheds Upstate. In this case the condemnation plea is brought before a "commission of appraisal" appointed by the Upstate County in which the property is located. This form of condemnation procedure is absolutely unique in the law of the State today. And it has led to abuses of many kinds, all of them tending to enrich citizens Upstate at the expense of the taxpayers of New York City.[51]

52. In recent years Upstate commissioners of appraisal have charged the City as much as 40 thousand dollars for trying condemnations which a Supreme Court Justice would normally have disposed of in a few days. The commissioners in one instance required 135 meetings to settle six awards and charged the City accordingly for their time.[52]

53. Not only is the City charged unmercifully for the "services" of these archaic commissions. The awards to

---

[51] Memorandum of Bernard J. Ruggieri, Legislative Assistant to the Mayor, to Mayor Wagner, in support of Acts to amend the Administrative Code of the City of New York and the judiciary law of New York State, January, 1962.

Report on Condemnation Procedures Applicable to New York City Water Supply Area, Committee on Municipal Affairs, Association of the Bar of the City of New York, March, 1962.

[52] Memorandum of Bernard J. Ruggieri to Mayor Wagner.

Association of the Bar of the City of New York, *op. cit.* fn. 50 *ante.*

Upstate property owners have displayed a generosity unparalleled in this history of eminent domain. The City, for example, was charged nearly 400 thousand dollars for three parcels of land whose combined assessed valuations were 44 thousand. Awards of 240 thousand dollars were made for two parcels whose owners had bought them only a few years earlier for 18 thousand and had in no way improved them.[53]

54. Not only does this unique condemnation procedure expose the City to enormous abuses through the discretionary powers of the Upsfate commissioners. The very law itself imposes obligations on the City to make payments of a kind required in no other condemnation proceedings in the State.

55. Under a unique "indirect damage provision" of this unique condemnation statute, Upstate property owners and even business and professional men living quite distant from the condemned property can claim damages for loss of customers and clients. The most far-fetched claims of this kind have led to heavy damage awards against the City, awards which may not be reduced by appeals to the courts.[54]

---

[53] *Ibid.*
New York World Telegram and Sun, February 1, 1962.

[54] Memorandum of Bernard J. Ruggieri to Mayor Wagner.
New York World Telegram and Sun, February 2, 1962.
The City may seek court review of these awards, but the only action which the court may take is to set aside the award. In that case the City can only return to still another commission of appraisal, pay another huge service charge to the new commissioners and anticipate from past experience that the new commission will prove just as irrationally generous with the City's money as was the earlier commission.
In summing up a broad indictment of the abuses referred to here in paragraphs 51 to 55, the Association of the Bar of the City of New York says (*op. cit.*):

> "The pattern of laws controlling the condemnation of land outside the City of New York for water supply purposes is unique, costly, discriminatory against the City of New York and ill-calculated to provide a just method of determining the value of land taken and to be paid for by the City of New

56. The scandal of Upstate's commissioners of appraisal has in recent years grown so great as to arouse the indignation even of some civic leaders in the counties where the abuses have taken place.[55] The City's proposals for its relief from these abuses have been simple in character. It is difficult to understand how there could be any controversy over these proposals except such as might arise from an Upstate determination to preserve this historic machinery for aggrandizing its citizens at the expense of the City.[56] Nevertheless the City has been unable thus far to secure affirmative action by the Legislature.[57]

57. In summing up this review of some of the Legislature's dealings with the City of New York, it would not be fair to say that the record is entirely black. Though over-represented, Upstate New York does not *always* abuse its power. And, though under-represented, New York City does have *some* influence. On some occasions divisions of interest Upstate give even the undermanned delegation from the City a very appreciable voice in the decision of the body as a whole. On even more occasions the interests of

---

York. . . . The measure of damages provided for in the law goes far beyond what the citizens whose land is taken by governmental agencies are entitled to receive. In addition, claimants are entitled to receive from the City the fees of experts retained by them to prove their case and, to a considerable extent, even the fees of their own lawyers. Persons whose land is not taken but whose interests are indirectly affected by the taking of land in the water supply area, also receive awards—a practice which maintains in no other area of the law of condemnation."

[55] New York World Telegram and Sun, February 3, 1962.

[56] Memorandum of Bernard J. Ruggieri to Mayor Wagner. The City's proposals are (1) to bring watershed condemnations by the City under the same jurisdiction of the State Supreme Court which that Court exercises over all other condemnation proceedings in the State; (2) to permit the City to pay the entire salary of a Supreme Court Justice to preside over such proceedings; (3) to set standards for payment of "indirect damages" which would bar capricious acts of generosity at the City's expense.

[57] Statement of Mayor Wagner, February 20, 1962.

the City and the rest of the State are similar, and at such times the size of the City's vote is immaterial.

58. The occasions on which the City suffers materially from its under-representation in the Legislature are in fact relatively few in the course of all the business conducted at a normal session. Nevertheless, over the years, a body of permanent legislation has grown brick by brick at session after session into a monument of discrimination against New York City whose foundation is the malapportionment provisions of the Constitution of 1894 and whose capstone is the State Aid program of 1962.

59. Were the City fully represented in the Legislature, it might still on occasion find itself outvoted on matters vitally affecting its welfare. But this is inevitable under the processes of democratic government. What is not inevitable, what is in fact a denial of those very processes, is an arrangement by which the people of New York City are sent into the legislative arena under a heavy handicap imposed by the fundamental law of the State.

60. What this action seeks, therefore, is the emancipation of the people of New York City from State laws which prevent them from pursuing their political objectives on equal terms with the rest of the people of the State. It seeks specifically a remedy for the unequal system of representation in the Legislature arising from the Constitution and the statutes of New York State.

61. As Professor Silva has shown, this system grants Upstate New York a substantially greater majority in both houses of the Legislature than it would be entitled to under a fair apportionment.

62. This action has been brought because the urban voters of New York have no remedy under the Law of their State. The malapportionment of the Legislature is required by the Constitution of New York. And the very malapportionment of the Legislature for which a remedy is sought excludes Constitutional amendment as a means of finding that remedy.

63. The State Constitution has no provision for amendment through popular initiative. It can only be amended at the recommendation of the Legislature or a Constitutional Convention.[58] At the present time, however, only the Legislature itself can initiate such a convention.[59]

64. Constitutional amendment is therefore possible at this time only through affirmative action of the Legislature. It is reasonable to assume, however, that the controlling Upstate members of that Legislature will not take the initiative in advancing a Constitutional amendment whose principal effect would be to diminish their control.

65. Even if a Constitutional amendment could in some way be initiated, this would offer no reasonable prospect of a remedy to the malapportionment of the Legislature. For the composition of that convention would necessarily reflect the excessive representation of Upstate New York which prevails in the Legislature.[60] And a controlling Upstate delegation to the convention would be no more likely to support a reduction of Upstate's power in the Legislature than would the Upstate delegation to the Legislature itself.

66. The recent history of the "Peck Commission"[61] gives a definitive answer to any suggestion that the Legislature might act voluntarily to correct the injustices of New York's present system of apportionment. That these injustices exist, Professor Silva has shown in her affidavit. Quite apart from the evidence submitted in that affidavit, it is common knowledge throughout the State. Assemblymen

---

[58] New York State Constitution, Art. XIX, §1.

[59] New York State Constitution, Art. XIX, §2, provides: "At the general election to be held in the year 1957, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question 'Shall there be a convention to revise the constitution and amend the same?' shall be submitted to and decided by the electors of the state, . . ."

[60] Under Art XIX, §2, each Senate district elects three delegates and the citizens of the State elect only fifteen delegates at large.

[61] The Temporary State Commission on the Revision and Simplification of the Constitution, the Chairman of which was the Hon. David W. Peck, former Presiding Justice of the Appellate Division (1st Dept.) of the State of New York.

and Senators know this better perhaps than anyone else. And a Commission created by the Legislature specifically to propose changes in the State Constitution could not have avoided an examination of the provisions on apportionment.

67. The Peck Commission did in fact begin a study of apportionment. From Professor Silva it received a comprehensive analysis of the present system, the most thorough study ever made of apportionment in any state. Early in 1961 the Peck Commission was reported to be giving special attention to the inequities of apportionment in New York State. It was at this time, even before the Commission had completed its recommendations, that the Legislature unexpectedly allowed the Commission to expire.[62] As for the thorough study of apportionment delivered by Professor Silva to the Commission, it was never made public by the State.

68. From the history of the Peck Commission it is clear that no affirmative action towards a remedy of malapportionment in New York State can be expected from the Legislature. And, as I have shown, without such action no remedy is possible under State Law.

69. This complaint presents for resolution by the Court, one of the most frustrating problems of public policy—discrimination against city dwellers by a State Legislature. There is no way in which the Legislature itself can reasonably be expected to resolve this problem. The voters of the State are powerless to initiate action. The key to constructive resolution is, therefore, with the Court.

70. There is no remedy for the pattern of discrimination and the denial of rights under the United States Constitution here stated except by the action of this Court.

/s/ R. Peter Straus
R. Peter Straus

Sworn to before me this
20th day of July, 1962.

/s/ Edward B. Schoen
Edward B. Schoen

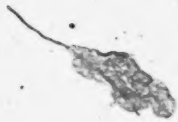
---

[62] See Senate Intro 3191 which would have extended the life of the Commission but which died itself in the Finance Committee.

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

On this 20th day of July, 1962, before me personally appeared R. PETER STRAUS, to me known and known to me to be the individual named in the foregoing affidavit and who executed said affidavit, and he duly acknowledged to me that he executed the same.

/s/ EDWARD B. SCHOEN



THIS PAGE INTENTIONALLY LEFT BLANK

[fol. 573]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

EXTRACTS FROM PLAINTIFF'S EXHIBIT 9—APPENDIX TO AFFIDAVIT OF RUTH C. SILVA

APPENDIX

Section		*Page*
1.	Provisions relating to senatorial apportionment	270
2.	The full-ratio rule	271
	Table I	271
3.	The provision for enlarging the Senate	271
	Table II	272
4.	The full-ratio rule combined with the enlarged Senate	272
	Table III	273
5.	Uniform discrimination	273
	Table IV	274
6.	Uniform discrimination caused by both provisions	274
	Table V	274
	Table VI	275
	Graph	276
	Table VII	276
7.	Provisions relating to assembly apportionment	277
8.	Discriminatory classification	278
	Table VIII	279
9.	Number of First Class counties	279
	Table IX	279

Section	*Page*
10. Fixed number of Assemblymen	280
Table X	280
11. "Remaining Members"	280
Table XI	281
[fol. 574]	
12. Three alternatives	282
13. The districting rule	282
Table XII	283
Table XIII	284
Table XIV	285
14. Citizen and total population	286
Table XV	287
Table XVI	288
Table XVII	289
Table XVIII	290
Table XIX	291

[fol. 575]
U.S.D.C., S.D.N.Y. Re: W.M.C.A., Inc. et al.
v. CAROLINE K. SIMON, Secretary of State of the State of of New York, et al.

APPENDIX

1. *The two following provisions* of the New York Constitution deprive citizens in New York's six most populous counties (Bronx, Erie, Kings, Nassau, New York, and Queens) of equitable representation in the Senate of the State of New York and, consequently, of an equal vote in state senatorial elections.

I. "No county shall have four or more senators unless it shall have a full ratio for each senator." N.Y. Const., Art. III, § 4 (1894)*

II. " . . . except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent." N.Y. Const., Art. III, § 4 (1894).*

[fol. 576]

CLERK'S NOTE

Table I—Showing "Senate Seat Remainders In All Counties Having Three Or More Full Ratios" (omitted in printing here). See printed side folio 537, page 243, ante.

[fol. 577] 2. *The full-ratio rule.* As shown in Table I *supra,* the full-ratio rule requires the State's six most populous counties to have large un-represented populations.

3. *The provision for enlarging the Senate:* Since the State's six most populous counties are required to have a full ratio (2% of the State's total citizen population) for each Senator, the average citizen population per Senator in these counties must exceed the ratio. Under the 1960 census, the ratio will be 324,816 but the average citizen population per Senator in the six most populous counties (Bronx, Erie, Kings, Nassau, New York, and Queens) will be 366,128. Moreover, because Senators are apportioned to the six most populous counties on the basis of a fifty-member Senate while the actual Senate is larger, arithmetic necessity requires Senators to be apportioned to the other counties on a second ratio that is smaller than the constitutional ratio.

---

* One ratio = 1/50th of the State's total citizen population. Therefore, a county can not have a fourth Senator unless such county has at least eight percent of the State's total citizen population.

Under the 1960 census, thirty-one of the State's fifty-seven Senators will be distributed to counties having only 6,721,470 citizen inhabitants. This means that the average citizen population for each of these thirty-one Senators will be only 216,822. Consequently, the second ratio (216,822) will be more than forty percent smaller than the average citizen population per Senator in the six most populous counties (366,128). If the Senate should be composed of only fifty-members, however, there will be only twenty-four Senators to distribute among these less populous counties. Therefore, the sec- [fol. 578] ond ratio would be 280,061—approximately twenty-three percent smaller than the average in the six most populous counties (366,128) and about thirteen percent smaller than the constitutional ratio (324,816). In other words, the larger the Senate, the greater the difference between the first and second ratios and the more under-represented the most populous counties are in relation to the less populous counties. (See Table II).

CLERK'S NOTE

Table II—Showing "Senate Ratios and Averages" (omitted in printing here). See printed side folio 538, page 244, ante.

[fol. 579] 4. *The full-ratio rule combined with the enlarged Senate:* Under the 1960 census, the full ratio rule will permit Nassau to have only three Senators although Nassau has a citizen population of 3.93 ratios. Therefore, the average senatorial district in Nassau County will have 425,267 citizen inhabitants. If the full-ratio rule of the New York Constitution be valid, the Legislature simply will have no discretion in creating districts in Nassau County which will have forty-nine percent more citizen inhabitants than the state-wide average of 234,926. Moreover, the second ratio will be only 216,822. If the ruling in the *Fay* case (291 N.Y. 198) be the only possible interpretation of the provision for enlarging the Senate, the Legislature will have no discretion about the size of the second ratio. Then when the Legislature attempts to conform to the various districting rules that

are also prescribed by the New York Constitution, some of the districts will inevitably have fewer citizen inhabitants than the second ratio. In order to conform to these districting rules, the Legislature will probably have to re-create the Essex-Saratoga-Warren (now the 39th) District, which is and will be the State's least populous senatorial district with only 166,715 citizen inhabitants or more than forty-one percent less than the state-wide average. Therefore, the range or variation between the most and the least populous districts will be at least ninety percent.* That is, the citizen population in an average Nassau district will be more than two and one-

[fol. 580]

CLERK'S NOTE

Table III—Showing "Senate Districts Under Constitution of 1894" (omitted in printing here). See printed side folio 539, page 245, ante.

[fol. 581] half times the citizen population of the Essex-Saratoga-Warren District. Even if the districting rules would allow the Legislature to make the smallest district one having 216,822 citizen inhabitants, the district would still be forty-nine percent less populous than the average district in Nassau. Therefore, even if all the districting rules were deleted from the New York Constitution, the two apportionment rules mentioned above would still require the least populous district to have no more than 216,822 citizen inhabitants and the most populous district to have at least 425,267 under the census of 1960.

5. *Uniform discrimination*: Not only do the full-ratio rule and the provision for enlarging the Senate create large variations between the most and least populous senatorial districts, but they also discriminate consistently against the most populous metropolitan counties (now Bronx, Erie, Kings, Nassau, New York, and Queens) and allow the least populous counties to elect a senatorial majority.

---

* 425,267 —166,715 = 258,552, which divided by 284,926 equals 90.7 percent. See Table III.

[fol. 582]

CLERK'S NOTE

Table IV—Showing "Percentage of Citizen Population and Senators In Counties Having" (omitted in printing here). See printed side folio 540, page 246, ante.

6. *Uniform discrimination caused by both provisions*: It would be incorrect to think that the full-ratio rule is responsible for all of the disparity between the senatorial representation of the most populous counties and that of the other counties. For, as shown in Table V, even if the full ratio rule were retained, the disparity between the senatorial representation of the most populous counties and that of the other counties could have been reduced if there had been no provision for enlarging the Senate.

[fol. 583]

TABLE V

	Average number of citizen inhabitants per Senator*		
		Remainder of State	
Apportionment	Counties having three or more ratios	In a 50-member Senate	In actual Senate
*1960	366,128	280,061	216,822
1953	301,178	263,984	195,859
1943	267,910	224,686	178,199
*1935	244,885	196,814	181,674
1917	170,157	153,552	148,068
1907	148,595	135,012	130,191
1894	120,682	112,835	112,835

* See note at end of Table IV *supra*.

The provision for enlarging the Senate means that the greater the population of a metropolitan county becomes, the more over-represented the less populous counties become. This is a matter of elementary arithmetic. Whenever the population of one of the most populous counties increases so that it is entitled to more Senators than it was given in 1894, these additional senate seats are not taken from the less populous counties although these counties' percentage of the State's

citizen population may actually have declined. Instead, the number of seats held by these less populous counties not only remains constant regardless of their loss of population but their number of seats actually increases [fol. 584] whenever New York, Bronx, Kings, or Erie becomes entitled to fewer seats than such county was given in 1894. Thus, seven new senatorial seats are created to give representation to the increased population of Nassau and Queens while New York County's loss of population means the transfer of three of New York County's senatorial seats to the Upstate. Consequently, abolition of the provision for enlarging the Senate would make the most populous counties' senatorial representation more nearly commensurate with their citizen population. If the next reapportionment creates a Senate of fifty rather than fifty-seven members, the six counties having almost 59 percent of the State's citizen population (Bronx, Erie, Kings, Nassau, New York, and Queens) will have 52 percent rather than 45.6 percent of the State's senators. (See Table VI and Graph based on Table VI).

[fol. 585]

TABLE VI

Apportionment	Actual number of Senators	Percent of citizen population and percent of Senators in all counties having three or more ratios		
		Population	Senators	
			50-member Senate	Actual Senate
*1960	*57	58.6	52.0	*45.6
1953	58	57.3	54.0	46.6
1943	56	58.3	54.0	48.2
*1930	*56	57.4	52.0	*46.4
*1925	*54	54.5	50.0	*44.3
1917	51	48.6	46.0	45.1
1907	51	48.4	46.0	45.1
1894	50	39.6	38.0	38.0

* No reapportionment act passed. Apportioned on the basis of the census in conformity with *In re* Fay, 291 N.Y. 198 (1943). Citizen population used in all cases.

[fol. 586]

CLERK'S NOTE

Percentage Graph showing "All Counties Having Three Or More Full Senate Ratios" (omitted in printing here). See printed side folio 541, page 247, ante.

[fol. 587]

TABLE VII

NUMBER OF SENATORS ON BASIS OF 1960 CENSUS OF CITIZEN POPULATION[a]

County	Citizen Population	Senators[b]	Citizen Population per Senator
Bronx	1,368,207	4	342,052
Erie	1,039,648	3	346,549
Kings	2,518,510	7	359,787
Nassau	1,275,801	3	425,267
New York	1,584,069	4	396,017
Queens	1,733,081	5	346,616
Subtotal	9,519,316	26	366,128
		On basis of second ratio[c]	
Albany	269,088	1	269,088
Monroe	571,029	3d	190,343
Niagara	235,677	1	235,677
Oneida	259,330	1	259,330
Onondaga	414,770	2d	207,385
Suffolk	650,112	3d	216,704
Westchester	782,179	3d	260,726
Subtotal	3,182,185	14	227,299
All other counties	3,539,285	17	208,193
Entire State	16,240,786	57	284,926

a. Data on 1960 citizen population supplied by the U. S. Bureau of Census.

b. Constitutional ratio = 324,816.

[fol. 588] 7. *The two following provisions* of the New York Constitution deprive the citizens in New York's fourteen most populous counties (Albany, Bronx, Erie, Kings, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Queens, Richmond, Suffolk, and Westchester) of equitable representation in the Assembly of the State of New York and, consequently, of an equal vote in the election of Assemblymen.

I. "The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly (150), shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to counties having the highest remainders in the order thereof respectively. . . ." N.Y. Const., Art. III, § 5, Para. 2 (1894).

---

c. Second ratio = 216,822. Sherrill v. O'Brien, 188 N.Y. 185 at 209 (1907); *In re* Fay, 291 N.Y. 198 at 213, 218 (1943); REPORT OF THE (New York) ATTORNEY GENERAL 1926 at 85-86.

d. Since 1894, it has been the practice in each of the five apportionments to give an additional Senator for a major fraction of a second ratio. LEGISLATIVE DOCUMENT (1950) No. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) No. 98 at 14A-14B. Under each of the five apportionments from the time single-member senatorial districts were first adopted in 1846 until 1894, it was the practice to give an additional Senator for every major fraction of a constitutional ratio—the one and only ratio under the Constitution of 1846. 3 LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK 182-190 (1906); LEGISLATIVE DOCUMENT (1950) No. 31 at 92-101. Although Westchester has 3.61 second ratios, the full ratio rule prevents Westchester from receiving a fourth Senator.

II. "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts [fol. 589] cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. . . ." N.Y. Const. Art. III, § 5, Para. 4 (1894).

8. *Discriminatory classification*: The second paragraph of Article III, section 5 divides the State's counties into three classes, which are hereafter referred to as First, Second, and Third class counties:

First. Counties having less than 1½ ratios or those having less than one percent of the State's total citizen population.

Second. Counties having from 1½ to 2 ratios or those having from one to one and one-third percent of the State's total citizen population.

Third. Counties having more than two ratios or those having more than one and one-third percent of the State's total citizen population.

This three-class system now discriminates against citizens living in the State's fourteen most populous counties. Under the 1960 citizen census, the ratio will be 108,272. One and a half ratios will equal 162,408. One As- [fol. 590] semblyman will be apportioned to each of the forty-four counties (with Fulton and Hamilton combined) having less than 162,408 citizen inhabitants. Two Assemblymen will then be apportioned to each of the seventeen other counties. This will leave 72 seats to be distributed among the fourteen Third Class counties. This means that forty-four seats will be apportioned to First Class counties, which have a citizen population of 2,761,656 or 62,765 citizen inhabitants per seat. Six seats will be apportioned to three Second Class counties,

representing 93,478 citizen inhabitants per seat. The remaining one hundred will be apportioned to the fourteen Third Class counties, which have a total citizen population of 12,918,265 or 129,183 citizen inhabitants per seat.

CLERK'S NOTE

Table VIII—Showing "Average Citizen population per Assemblyman in counties of" (omitted in printing here). See printed side folio 542, page 248, ante.

[fol. 591] 9. *Increased number of First Class counties*: The real cause for the Third Class counties' growing under-representation is the increased number of First Class counties falling below the ratio. In 1894, the First Class counties were apportioned only two seats more than was commensurate with their proportion of the State's representative population, because only 21 were below the ratio while 15 had unrepresented remainders. Today, however, there are 38 counties below the ratio and only six First Class counties with unrepresented remainders. Consequently, at the next apportionment, the First Class counties will receive eighteen seats more than is commensurate with their share of the State's population.

TABLE IX

Census	Number of counties having assembly ratios equal to: Less than one	From 1 to 1½	From 1½ to 2	Two or more	Total
*1960	38	6	3	14	61
1950	40	5	4	12	61
1940	38	7	4	12	61
*1930	37	5	8	11	61
*1925	34	8	8	11	61
1915	31	8	10	12	61
1905	29	12	8	11	60
1892	21	15	9	14	59
Class	First		Second	Third	State

* See note at end of Table VIII *supra*.

[fol. 592] 10. *Fixed number of Assemblymen*: Because the size of the Assembly is limited to 150 members and because each county is guaranteed at least one seat, arithmetic necessity requires the counties falling below the ratio to receive their over-representation at the expense of the Third Class counties. Therefore, as the number of counties falling below the ratio increases, the more under-represented the Third Class counties become in relation to the other counties.

CLERK'S NOTE

Table X—Showing "Percent of citizen inhabitants and of assembly seats in counties of the" (omitted in printing here). See printed side folio 543, page 249, ante.

[fol. 593] 11. *"Remaining Members":* The under-representation of the Third Class counties is quite unrelated to the controversy about which of eight or more formulae should be used for apportioning "remaining Members" (LEGISLATIVE DOCUMENT (1935) No. 85 at 18-27). These formulae relate *only* to the apportionment of assembly seats after one seat has been assigned to each county having less than 1½ ratios and two have been apportioned to all other counties. Under the 1960 census, these formulae would relate only to the distribution of 72 seats among the Third Class counties. For all practical purposes, the selection of the equal proportions or major-fractions formula instead of the Brown formula will mean shifting one seat each from Monroe and Onondaga counties to Bronx and Kings counties. These formulae simply have nothing to do with the apportionment of Assemblymen to the First and Second Class counties. The choice of an apportionment formula for distributing "remaining Members" under the present New York Constitution simply determines which of the fourteen Third Class counties will suffer the greatest inequity.

[fol. 594]

TABLE XI

CITIZEN CENSUS OF 1960*

All Counties Having More than Two Constitutional Ratios	Number of Constitutional Ratios	Number of Assembly Seats Under Various Formulae				
			Using Second Ratio			Major Fractions of Equal Proportions
		Cullen	Tuttle	Brown	McQuade	
Albany	2.49	2	2	2	4	2
Bronx	12.64	11	11	10	10	11
Erie	9.60	8	8	8	8	8
Kings	23.26	21	20	19	16	20
Monroe	5.27	4	4	5	5	4
Nassau	11.78	10	10	10	9	10
New York	14.63	13	12	12	11	12
Niagara	2.18	2	2	2	3	2
Oneida	2.40	2	2	2	3	2
Onondaga	3.83	2	3	4	4	3
Queens	16.01	14	13	13	12	13
Richmond	2.00	2	2	2	3	2
Suffolk	6.00	4	5	5	6	5
Westchester	7.22	5	6	6	6	6
Total	119.31	100	100	100	100	100

*Supplied by U. S. Bureau of the census. See also LEGISLATIVE DOCUMENT (1935) NO. 85 at 18-27.

MORE

594

[fol. 595] 12. *Three alternatives*: Equitable representation in the New York Assembly can be given to the State's fourteen most populous counties in only one of three ways: (1) greatly enlarging the total number of Assemblymen, (2) abolishing the guarantee of separate representation to each of the State's thirty-eight counties that are below the ratio, or (3) electing the State's 150 Assemblymen in the state-at-large.

13. *The districting rule:* The fourth paragragh of Article III, section 5, which requires an assembly district to lie wholly in the same senatorial district, produces even greater population differentials between assembly districts than appear in Tables VIII and X *supra*. Onondaga, for example, now has two Senators and three Assemblymen. This means that one Assemblyman is elected in one of Onondaga's senatorial districts while Onondaga's other senatorial district has been divided into two assembly districts. Since Onondaga's two senatorial districts each have the same number of citizen inhabitants as required by the New York Constitution,* one of Onondaga's assembly districts contains twice as many citizen inhabitants as either of the other two does. Moreover, this rule, which precludes dividing an [fol. 596] assembly district between two senatorial districts, required similar population inequalities between assembly districts in Erie, Kings, New York, and Queens counties as well as in Onondaga County under the apportionment of 1953 (Table XII *infra*) and will require even more population inequalities between assembly districts under the next reapportionment (Table XIII and Table XIV *infra*).

---

* ". . . nor shall any (senate) district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens." N.Y. Const., Art. III, § 4, Para. 1 (1894).

[fol. 597]

TABLE XII

ASSEMBLY DISTRICTS IN ALL COUNTIES HAVING TWO OR MORE SENATE DISTRICTS UNDER APPORTIONMENT OF 1953

County	Total Number of Senate Districts	Total Number of Assembly Districts	Number of Senate Districts	Number of Assembly Districts in Each Senate District	1950 Citizen Population in Each Assembly District** Range	Average
Bronx	4	12	4	3	114,832-114,857	114,848
Erie	3	8	-	-	97,610-146,423	109,813
			2	3	97,610--97,613	97,612
			1	2	146,408-146,423	146,416
Kings	9	22	-	-	96,114-144,182	117,963
			4	3	96,114--96,123	96,119
			5	2	144,171-144,182	144,176
Monroe	2	4	2	2	118,753-118,766	118,759
Nassau	3	6	3	2	81,361-137,201*	109,282
New York	6	16	-	-	99,755-149,655	112,233
			4	3	99,755--99,770	99,763
			2	2	149,630-149,655	149,643
Onondaga	2	3	-	-	83,613-167,226	111,484
			1	2	83,613--83,614	83,613½
			1	1	167,226	167,226
Queens	5	13	-	-	98,947-148,421	114,170
			3	3	98,947--99,158	99,018
			2	2	148,107-148,421	148,264
Westchester	3	6	3	2	98,874-101,686*	100,280

* Differential caused by rule: "No town, except a town having more than a ratio of apportionment and one-half over . . . shall be divided in the formation of assembly district, ..." N.Y. Const., Art. III, § 5, Para. 4. This means that no town can be divided unless it contains more than one and one-third percent of the State's total citizen population.

**Tabulated from statistics in THE [NEW YORK] CITY RECORD (June 3, 1954) at 4082-4086, 4088-4093, and from those supplied by Mr. C. Burr Reed, former Executive Clerk to the Joint Legislative Committee on Reapportionment.

TABLE XIII

ASSEMBLY DISTRICTS IN ALL COUNTIES ENTITLED TO TWO OR MORE SENATE DISTRICTS UNDER CITIZEN CENSUS OF 1960

County	Total Number of Sentate Districts	Total Number of Assembly Districts[a]	Number of Senate Districts	Number of Assembly Districts in Each Senate District	Approximate 1960 Population in Each Assembly District[b]
Bronx	4	10	-	-	136,821
			2	3	114,017
			2	2	171,026
Erie	3	8	-	-	129,956
			2	3	115,516
			1	2	173,275
Kings	7	19	-	-	132,553
			5	3	119,929
			2	2	179,894
Monroe	3[c]	5	-	-	114,206
			2	2	95,172
			1	1	190,343
Nassau	3	10	-	-	127,580
			2	3	141,756
			1	4	106,317
New York	4	12	4	3	132,006
Onondaga	2[c]	4	2	2	103,693
Queens	5	13	-	-	133,314
			3	3	115,539
			2	2	173,308
Suffolk	3[c]	5	-	-	130,022
			2	2	108,352
			1	1	216,704
Westchester	3	6	3	2	130,363

a. Apportioned according to the Brown formula. LEGISLATIVE DOCUMENT (1953) NO. 98 at 11-12; Matter of Dowling, 219 N.Y. 44 at 59 (1916).

b. Data on 1960 citizen population supplied by the U.S. Bureau of the Census.

[Vol. 39]

Bronx	10	11	4+	4+
Erie	8	8	3+	3+
Kings	19	19	7+	7+
Nassau	10	10	3+	3+
New York	12	12	4+	5+
Queens	13	13	5+	5+

			Number of second ratios	
			Citizen Population	Total Population
Albany	2	2	1.24	1.19
Monroe	5	5	2.63	2.57
Niagara	2	2	1.09	1.06
Oneida	2	2	1.20	1.16
Onondaga	4	3	1.91	1.85
Richmond	2	2	1.00-	0.97 +
Suffolk	5	5	3.00-	2.92
Westchester	6	6	3.61	3.54

[Vol. 601]

* Data on 1960 census of citizen and total populations supplied by the U. S. Bureau of the Census. Assemblymen apportioned according to the Brown formula. LEGISLATIVE DOCUMENT NO. 98 at 11-12; Matter of Dowling, 219 N.Y. 44 at 59 (1916).

[Vol. 287]

60/

			1	2	173,275
Kings	7	19	-	-	132,553
			5	3	119,929
			2	2	179,894
Monroe	3[c]	5	-	-	114,206
			2	2	95,172
			1	1	190,343
Nassau	3	10	-	-	127,580
			2	3	141,756
			1	4	106,317
New York	4	12	4	3	132,006
Onondaga	2[c]	4	2	2	103,693
Queens	5	13	-	-	133,314
			3	3	115,539
			2	2	173,308
Suffolk	3[c]	5	-	-	130,022
			2	2	108,352
			1	1	216,704
Westchester	3	6	3	2	130,363

a. Apportioned according to the Brown formula. LEGISLATIVE DOCUMENT (1953) NO. 98 at 11-12; Matter of Dowling, 219 N.Y. 44 at 59 (1916).

b. Data on 1960 citizen population supplied by the U.S. Bureau of the Census.

c. Since 1894, it has been the practice in each of the five apportionments (excluding those of 1906 and 1916 which were held invalid) to give an additional Senator for a major fraction of a second ratio. LEGISLATIVE DOCUMENT (1950) NO. 31 at 77-91; LEGISLATIVE DOCUMENT (1953) NO. 98 at 14A-14B. Under the five apportionments from the time single-member senatorial districts were first adopted in 1846 until 1894, it was the practice to give an additional Senator for every major fraction of a constitutional ratio --- the one and only ratio under the Constitution of 1846. 3 LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK 182-190 (1906); LEGISLATIVE DOCUMENT (1950) NO. 31 at 92-101.

MORE

[Vol. 598]

284

TABLE XIV

APPORTIONMENT OF ASSEMBLYMEN ON BASIS OF 1960 CENSUS OF CITIZEN POPULATION*

Rank	County	1960 Citizen Population in Each Assembly District
1	Schuyler	14,974
2	Yates	18,552
3	Schoharie	22,410
4	Lewis	23,064
5	Greene	30,931
6	Putnam	31,006
7	Seneca	31,235
8	Orleans	33,845
9	Wyoming	34,534
10	Essex	34,987
11	Tioga	37,610
12	Cortland	40,685
13	Chenango	42,979
14	Delaware	43,237
15	Warren	43,594
16	Livingston	43,690
17	Allegany	43,759
18	Franklin	43,915
19	Sullivan	44,434
20	Columbia	46,734
21	Washington	48,135
22	Otsego	51,588
23	Genesee	53,416
24	Madison	54,262
25	Fulton & Hamilton	55,067
26	Montgomery	56,287
27	Tompkins	64,227
28	Herkimer	65,218
29	Wayne	67,344
30	Ontario	67,410
31	Clinton	71,389
32	Cayuga	73,240
33	Cattaraugus	79,548
34	Oswego	85,356
35--36	Dutchess (2 districts)	approx. 85,698
37	Jefferson	86,606
38	Saratoga	88,124

Kings	2,518,510	7	359,787
Nassau	1,275,801	3	425,267
New York	1,584,069	4	396,017
Queens	1,733,081	5	346,616
Subtotal	9,519,316	26	366,128
All other counties	6,721,470	31[c]	216,822
Entire State	16,240,786	57[c]	284,926
			ratio = 324,816

a. See Table XV supra.

b. Data on 1960 citizen population supplied by the U.S. Bureau of the Census.

c. Total number of Senators determined in conformity with In re Fay, 291 N.Y. 198 (1943) as follows:

All counties now having three or more full ratios	Number of Senators apportioned by Convention of 1894	Number of Senators according to Census of 1960	Gain
Bronx New York	12	4 4	--
Erie	3	3	0
Kings	7	7	0
Nassau Queens	1	3 5	+ 7
		Additional Senators	+ 7
		Basic number of Senators	50
		Total number of Senators	57

[Vol. 602]

31	Clinton		71,389
32	Cayuga		73,240
33	Cattaraugus		79,548
34	Oswego		85,356
35--36	Dutchess (2 districts)	approx.	85,698
37	Jefferson		86,606
38	Saratoga		88,134
39--40	Orange (2 districts)	approx.	89,937
41--44	Monroe (4 districts)	approx.	95,172**
45	Steuben		97,176
46	Chemung		97,891
47--50	Onondaga (4 districts)	approx.	103,693
51--52	Broome (2 districts)	approx.	104,799
53--56	Nassau (4 districts)	approx.	106,317**
******	NEW YORK STATE AVERAGE		108,272
57--60	Suffolk (4 districts)	approx.	108,352**
61--62	Richmond (2 districts)	approx.	108,382
63	St. Lawrence		109,082
64--69	Bronx (6 districts)	approx.	114,017**
70--75	Erie (6 districts)	approx.	115,516**
76--84	Queens (9 districts)	approx.	115,539**
85	Ulster		116,818
86--87	Niagara (2 districts)	approx.	117,839
88--102	Kings (15 districts)	approx.	119,929**
103--104	Oneida (2 districts)	approx.	129,665
105--110	Westchester (6 districts)	approx.	130,363
111	Rockland		131,834
112--123	New York (12 districts)	approx.	132,006
124--125	Albany (2 districts)	approx.	134,544
126	Rensselaer		140,933
127--132	Nassau (6 districts)	approx.	141,756**
133	Chautauqua		143,832
134	Schenectady		150,688
135--138	Bronx (4 districts)	approx.	171,026**
139--140	Erie (2 districts)	approx.	173,275**
141--144	Queens (4 districts)	approx.	173,308**
145--148	Kings (4 districts)	approx.	179,894**
149	Monroe (1 district)	approx.	190,343**
150	Suffolk (1 district)	approx.	216,704**

---

* Data on 1960 citizen population supplied by the U. S. Bureau of the Census. Assemblymen apportioned according to the Brown formula. LEGISLATIVE DOCUMENT (1953) NO. 98, at 11-12; Matter of Dowling, 219 N.Y. 44 at 59 (1916).

** Assembly districts distributed among senatorial districts in conformity

86--87	Niagara (2 districts)	approx.	...7,639
88--102	Kings (15 districts)	approx.	119,929**
103--104	Oneida (2 districts)	approx.	129,665
105--110	Westchester (6 districts)	approx.	130,363
111	Rockland		131,834
112--123	New York (12 districts)	approx.	132,006
124--125	Albany (2 districts)	approx.	134,544
126	Rensselaer		140,933
127--132	Nassau (6 districts)	approx.	141,756**
133	Chautauqua		143,832
134	Schenectady		150,688
135--138	Bronx (4 districts)	approx.	171,026**
139--140	Erie (2 districts)	approx.	173,275**
141--144	Queens (4 districts)	approx.	173,308**
145--148	Kings (4 districts)	approx.	179,894**
149	Monroe (1 district)	approx.	190,343**
150	Suffolk (1 district)	approx.	216,704**

---

* Data on 1960 citizen population supplied by the U. S. Bureau of the Census. Assemblymen apportioned according to the Brown formula. LEGISLATIVE DOCUMENT (1953) NO. 98, at 11-12; Matter of Dowling, 219 N.Y. 44 at 59 (1916).

** Assembly districts distributed among senatorial districts in conformity with the requirement: "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts in any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants." N.Y. Const., Art. III, § 5, Para. 4 (1894). The population in districts in the multi-member counties may vary due to the rule precluding the division of towns and blocks. Ibid.

[fol. 600] 14. *Citizen and total population*: Since the ratio between citizens and non-citizens is now approximately the same in every county (Table XVIII *infra*), the inclusion of aliens in the apportionment base is usually a matter of little or no practical consequence. Yet, the State disbursed almost $300,000 to have the citizen census tabulations made after the 1950 census and has disbursed, or is now preparing to disburse, approximately $400,000 to have the 1960 citizen population tabulated. Inclusion of aliens in the apportionment base in 1953, however, would not have transferred a single Senator or Assemblyman from one county to another. The distribution of Senators and Assemblymen would have been precisely the same if total population rather than citizen population had been used for apportionment purposes in 1953. The use of citizen population rather than total population at the next apportionment will mean one more Assemblyman for Onondaga County and one less for Bronx County. Similarly, it will mean one less Senator for New York County and one more for the less-populous upstate counties. Thus, the State is taxing New York City residents to pay approximately $400,000 to get an apportionment base that will discriminate against New York City even more than would be the case if total population (rather than citizen population) were used for the next apportionment.

TABLE XV*

All Third Class Counties Under Census of 1960	Number of Assemblymen*		Number of Senate Ratios	
	Citizen Population	Total Population	Citizen Population	Total Population
Bronx	10	11	4+	4+
Erie	8	8	3+	3+
Kings	19	19	7+	7+
Nassau	10	10	3+	3+
New York	12	12	4+	5+
Queens	13	13	5+	5+

	Number of second ratios	
	Citizen Population	Total Population
Albany	2	2	1.24	1.19
Monroe	5	5	2.63	2.57
Niagara	2	2	1.09	1.06
Oneida	2	2	1.20	1.16
Onondaga	4	3	1.91	1.85
Richmond	2	2	1.00-	0.97+
Suffolk	5	5	3.00-	2.92
Westchester	6	6	3.61	3.54

* Data on 1960 census of citizen and total populations supplied by the U. S. Bureau of the Census. Assemblymen apportioned according to the Brown formula. LEGISLATIVE DOCUMENT NO. 98 at 11-12; Matter of

Essex[e]	96.9	96.0	95.2	97.6	96.8	98.0	98.4	99.1
Franklin	93.0	91.3	92.5	95.3	94.8	96.8	98.0	98.2
Fulton & Hamilton[e]	96.3	96.1	92.7	95.1	95.6	97.1	98.3	99.1
Genesee	96.7	95.6	90.5	93.0	94.4	96.4	98.1	98.9
Greene	99.0	97.4	96.2	96.7	97.1	97.0	97.7	98.6
Herkimer	96.4	94.8	87.9	92.1	93.7	95.4	97.2	98.3
Jefferson	94.2	92.8	92.4	93.9	94.9	96.7	97.7	98.6
Lewis	97.2	97.6	95.4	96.1	96.5	97.6	98.5	99.2
Livingston[f]	95.8	95.9	92.9	95.6	96.6	97.6	98.6	99.2
Madison	98.7	98.4	95.7	97.3	98.0	98.4	98.7	99.3
Monroe	90.6	94.2	88.0	91.1	92.2	95.3	97.4	97.4
Montgomery	95.1	93.4	85.3	90.6	92.1	94.6	96.7	98.3
Nassau[d]	----	88.6	85.2	89.1	90.0	94.2	97.5	98.1
Niagara	91.9	91.2	84.6	97.1	88.5	93.0	96.9	97.3
Oneida	94.7	94.3	86.5	90.8	92.9	95.4	97.1	98.1
Onondaga	94.2	95.1	90.9	92.6	93.5	95.9	97.9	98.0
Ontario[f]	96.4	96.2	95.0	96.6	96.9	97.8	98.5	99.0
Orange	95.4	93.9	91.6	94.8	95.3	96.4	97.5	97.9
Orleans	93.4	96.0	92.4	95.5	95.9	96.9	98.2	99.1
Oswego	97.3	98.2	93.8	96.1	96.6	97.6	98.4	99.1
Otsego	99.0	98.9	97.3	97.8	97.9	98.0	98.7	99.3
Putnam	93.6	92.3	91.9	94.4	93.6	96.6	96.9	97.7
Rennselaer	94.4	96.8	95.3	95.8	95.8	97.1	98.0	98.8
Rockland	92.9	91.6	90.3	94.2	94.5	95.0	96.5	96.4
St. Lawrence	93.5	94.2	92.1	92.2	92.5	95.3	97.6	98.1
Saratoga	95.8	96.6	93.3	94.9	94.9	96.8	98.1	98.9
Schenectady	92.5	90.9	87.5	91.3	92.6	95.4	97.8	98.6
Schoharie	99.5	98.6	97.5	97.9	98.5	97.6	97.9	99.1
Schuyler	96.8	98.7	97.0	98.0	98.2	98.8	99.2	99.5
Seneca	97.7	97.8	94.6	95.0	94.9	96.0	96.6	97.7
Steuben	98.7	98.6	97.2	98.1	98.3	98.7	99.3	99.5
Suffolk	92.6	92.6	88.4	89.9	90.6	92.7	94.5	97.5
Sullivan	98.7	96.5	91.8	90.7	94.0	94.7	96.6	98.1
Tioga	99.0	98.8	98.2	97.6	97.8	98.0	98.9	99.5
Tompkins	98.7	97.7	95.5	96.1	96.6	97.3	97.9	97.1

TABLE X

APPORTIONMENT BASED ON CITIZ

County	Citizen Population[b]
Bronx	1,368,207
Erie	1,039,648
Kings	2,518,510
Nassau	1,275,801
New York	1,584,069
Queens	1,733,081
Subtotal	9,519,316
All other counties	6,721,470
Entire State	16,240,786

a. See Table XV supra.

b. Data on 1960 citizen population s
the Census.

c. Total number of Senators determin
291 N.Y. 198 (1943) as follows:

All counties now having three or more full ratios	Number of Se apportione Convention o
Bronx New York	12
Erie	3
Kings	7
Nassau Queens	1

XVI

IZEN POPULATION IN 1960[a]

Senators	Citizen Population per Senator
4	342,052
3	346,549
7	359,787
3	425,267
4	396,017
5	346,616
26	366,128
31[c]	216,822
57[c]	284,926
	ratio = 324,816

supplied by the U.S. Bureau of

ined in conformity with In re Fay,

Senators ned by of 1894	Number of Senators according to Census of 1960	Gain
	4 4	--
	3	0
	7	0
	3 5	+ 7

[fol. 602]

	Total	Citizen	Alien			
1 Albany	272,926	269,088	3,838			
2 Allegany	43,978	43,759	219			
3 Bronx	1,424,815	1,368,207	56,608			
4 Broome	212,661	209,597	3,064			
5 Cattaraugus	80,187	79,548	639			
6 Cayuga	73,942	73,240	702			
7 Chautauqua	145,377	143,832	1,545			
8 Chemung	98,706	97,891	815			
9 Chenango	43,243	42,979	264			
10 Clinton	72,722	71,389	1,333			
11 Columbia	47,322	46,734	588			
12 Cortland	41,113	40,685	428			
13 Delaware	43,540	43,237	303			
14 Dutchess	176,008	171,395	4,613			
15 Erie	1,064,688	1,039,648	25,040			
16 Essex	35,300	34,987	313			
17 Franklin	44,742	43,915	827			
18 Fulton	51,304	50,847	457			
19 Genesee	53,994	53,416	578			
20 Greene	31,372	30,931	441			
21 Hamilton	4,267	4,220	47			
22 Herkimer	66,370	65,218	1,152			
23 Jefferson	87,835	86,606	1,229			
24 Kings	2,627,319	2,518,510	108,809			
25 Lewis	23,249	23,064	185			
26 Livingston	44,053	43,690	363			
27 Madison	54,635	54,262	373			
28 Monroe	586,387	571,029	15,358			
29 Montgomery	57,240	56,287	953			
30 Nassau	1,300,171	1,275,801	24,370			
31 New York	1,698,281	1,584,069	114,212			

MORE

[fol. 605]

TABLE XVII

APPORTIONMENT BASED ON CITIZEN POPULATION IN 1960[a]

Third Class Counties	Population[b]	Assemblymen	Population per Assemblyman
Albany	269,088	2	134,544
Bronx	1,368,207	10	136,821
Erie	1,039,648	8	129,956
Kings	2,518,510	19	132,553
Monroe	571,029	5	114,206
Nassau	1,275,801	10	127,580
New York	1,584,069	12	132,006
Niagara	235,677	2	117,839
Oneida	259,330	2	129,665
Onondaga	414,770	4	103,693
Queens	1,733,081	13	133,314
Richmond	216,764	2	108,382
Suffolk	650,112	5	130,022
Westchester	782,179	6	130,363
Subtotal	12,918,265	100[c]	129,183
Second Class Counties			
Broome	209,597	2	104,799
Dutchess	171,395	2	85,698
Orange	179,873	2	89,937
Subtotal	560,865	6	93,478
First Class Counties			

[fol. 603]

Kings	2,518,510	19	132,553
Monroe	571,029	5	114,206
Nassau	1,275,801	10	127,580
New York	1,584,069	12	132,006
Niagara	235,677	2	117,839
Oneida	259,330	2	129,665
Onondaga	414,770	4	103,693
Queens	1,733,081	13	133,314
Richmond	216,764	2	108,382
Suffolk	650,112	5	130,022
Westchester	782,179	6	130,363
Subtotal	12,918,265	100[c]	129,183
Second Class Counties			
Broome	209,597	2	104,799
Dutchess	171,395	2	85,698
Orange	179,873	2	89,937
Subtotal	560,865	6	93,478
First Class Counties			
45 counties (including Hamilton)	2,761,656	44	62,765
New York State Total	16,240,786	150	ratio = 108,272

a. See Table XV supra.

b. Data on 1960 citizen population supplied by the U. S. Bureau of the Census.

c. 72 "remaining Members" apportioned to Third Class counties according to the Brown formula. LEGISLATIVE DOCUMENT (1953) NO. 98 at 11-12.

[fol. 603]

TABLE XVIII

CITIZEN PERCENTAGE OF TOTAL POPULATION

AREA	1892	1905	1915	1925	1930	1940	1950	1960
NEW YORK STATE	88.9	87.6	83.2	86.6	88.1	92.0	95.8	96.8
NEW YORK CITY	82.3	80.4	76.1	80.9	83.7	89.0	94.3	95.4
Bronx[a]	----	----	80.1	83.4	84.2	89.0	95.0	96.0
Kings[b]	87.3	86.8	80.1	81.6	84.3	89.2	94.8	95.9
New York[a,c]	79.0	75.5	68.9	74.9	78.9	85.5	91.6	93.3
Queens[b,d]	87.4	90.7	88.5	90.4	89.4	92.8	95.7	95.8
Richmond	87.2	91.2	86.0	88.7	89.4	94.0	96.6	97.6
REMAINDER OF STATE	94.5	94.7	90.9	93.0	93.5	95.8	97.5	98.0
Albany	93.7	95.6	92.2	94.5	94.7	96.3	97.8	98.6
Allegany	98.9	97.6	98.1	99.2	99.1	99.4	99.3	99.5
Broome	98.1	96.8	91.8	92.3	94.3	96.9	98.3	98.6
Cattaraugus	96.6	95.8	92.6	97.1	97.4	97.8	98.8	99.2
Cayuga	96.4	96.5	93.8	94.6	95.4	96.5	98.4	99.1
Chautauqua	93.6	94.9	91.5	94.1	94.7	96.2	98.5	98.9
Chemung	97.1	98.6	96.4	97.4	97.8	98.3	99.0	99.2
Chenango	98.7	98.6	97.5	98.4	98.4	98.5	99.0	99.4
Clinton	95.5	96.5	95.1	95.6	96.0	97.4	97.8	98.2
Columbia	97.3	96.3	92.3	95.2	95.3	96.5	97.5	98.8
Cortland	98.9	98.0	95.9	97.2	97.4	98.1	99.0	99.0
Delaware	98.9	98.3	96.6	97.8	98.2	98.3	98.7	99.3
Dutchess	95.8	95.4	92.3	94.2	93.4	94.8	96.5	97.4
Erie	87.7	92.6	88.6	91.9	92.7	95.8	97.7	97.6
Essex[e]	96.9	96.0	95.2	97.6	96.8	98.0	98.4	99.1
Franklin	93.0	91.3	92.5	95.3	94.8	96.8	98.0	98.2
Fulton & Hamilton[e]	96.3	96.1	92.7	95.1	95.6	97.1	98.3	99.1
Genesee	96.7	95.6	90.5	93.0	94.4	96.4	98.1	98.9

Otsego	99.0	98.9	97.3	97.8	97.9	98.0	98.7	99.3
Putnam	93.6	92.3	91.9	94.4	93.6	96.6	96.9	97.7
Rennselaer	94.4	96.8	95.3	95.8	95.8	97.1	98.0	98.8
Rockland	92.9	91.6	90.3	94.2	94.5	95.0	96.5	96.4
St. Lawrence	93.5	94.2	92.1	92.2	92.5	95.3	97.6	98.1
Saratoga	95.8	96.6	93.3	94.9	94.9	96.8	98.1	98.9
Schenectady	92.5	90.9	87.5	91.3	92.6	95.4	97.8	98.6
Schoharie	99.5	98.6	97.5	97.9	98.5	97.6	97.9	99.1
Schuyler	96.8	98.7	97.0	98.0	98.2	98.8	99.2	99.5
Seneca	97.7	97.8	94.6	95.0	94.9	96.0	96.6	97.7
Steuben	98.7	98.6	97.2	98.1	98.3	98.7	99.3	99.5
Suffolk	92.6	92.6	88.4	89.9	90.6	92.7	94.5	97.5
Sullivan	98.7	96.5	91.8	90.7	94.0	94.7	96.6	98.1
Tioga	99.0	98.8	98.2	97.6	97.8	98.0	98.9	99.5
Tompkins	98.7	97.7	95.5	96.1	96.6	97.3	97.9	97.1
Ulster	97.4	96.1	93.7	95.2	96.3	96.6	97.5	98.3
Warren	98.4	97.4	96.1	97.7	97.6	98.3	98.7	99.1
Washington	97.2	96.2	95.3	97.0	97.0	97.9	98.3	99.3
Wayne	96.4	96.8	93.7	96.3	97.2	98.0	98.8	99.1
Westchester[c]	89.1	88.5	84.9	88.9	88.9	93.6	96.1	96.7
Wyoming	96.9	98.2	95.5	96.9	97.0	97.7	98.3	99.3
Yates	97.7	98.3	96.9	98.3	98.4	98.6	99.1	99.7

Computed from statistics in the following sources: Legislative Manual (1895), pp. 171-214; ibid. (1935), pp. 860-861; Legislative Document (1935) No. 85, p. 57; ibid. (1942) No. 59, pp. 32-33, 36-37; ibid. (1953) No. 98, p. 14. All statistics used and, consequently, all computations are for the county as it was constituted at the time of the census. Data on 1960 census supplied by U.S. Bureau of the Census. See Table XIX infra.

a. Part of New York taken to form Bronx, 1914.

b. Parts of Queens annexed to Kings, 1915 and 1925. Part of Kings annexed to Queens, 1925.

c. Part of Westchester annexed to New York, 1895.

d. Part of Queens taken to form Nassau, 1899. Part of Queens annexed to Nassau, 1928.

e. Part of Essex annexed to Hamilton, 1915.

f. Part of Ontario annexed to Livingston, 1922.

CITIZENSHIP OF THE POPULATION OF NEW YORK CITY: 1960

County	1960 Population		
	Total	Citizen	Alien
Bronx	1,424,815	1,368,207	56,608
Kings	2,627,319	2,518,510	108,809
New York	1,698,281	1,584,069	114,212
Queens	1,809,578	1,733,081	76,497
Richmond	221,991	216,764	5,227
New York City	7,781,984	7,420,631	361,353

TABLE XIX

CENSUS OF 1960

(Supplied by the U. S. Bureau of the Census)

Form BC-185
(6-1-60)

NEW YORK.
(Code 21)

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

Title

CITIZENSHIP OF THE POPULATION FOR NEW YORK: 1960

COUNTY Number of counties, 62	1960 POPULATION					
	Total	Citizen	Alien			
1 Albany	272,926	269,088	3,838			
2 Allegany	43,978	43,759	219			
3 Bronx	1,424,815	1,368,207	56,608			
4 Broome	212,661	209,597	3,064			
5 Cattaraugus	80,187	79,548	639			
6 Cayuga	73,942	73,240	702			
7 Chautauqua	145,377	143,832	1,545			
8 Chemung	98,706	97,891	815			
9 Chenango	43,243	42,979	264			
10 Clinton	72,722	71,389	1,333			
11 Columbia	47,322	46,734	588			
12 Cortland	41,113	40,685	428			
13 Delaware	43,540	43,237	303			
14 Dutchess	176,008	171,395	4,613			
15 Erie	1,064,688	1,039,648	25,040			
16 Essex	35,300	34,987	313			
17 Franklin	44,742	43,915	827			
18 Fulton	51,304	50,847	457			
19 Genesee	53,994	53,416	578			
20 Greene	31,372	30,931	441			

[fol. 605]

TABLE XIX

CENSUS OF 1960

(Supplied by the U. S. Bureau of the Census)

NEW YORK - Con.

COUNTY	1960 POPULATION					
	Total	Citizen	Alien			
32 Niagara	242,269	235,677	6,592			
33 Oneida	264,401	259,330	5,071			
34 Onondaga	423,028	414,770	8,258			
35 Ontario	68,070	67,410	660			
36 Orange	183,734	179,873	3,861			
37 Orleans	34,159	33,845	314			
38 Oswego	86,118	85,356	762			
39 Otsego	51,942	51,588	354			
40 Putnam	31,722	31,006	716			
41 Queens	1,809,578	1,733,081	76,497			
42 Rensselaer	142,585	140,933	1,652			
43 Richmond	221,991	216,764	5,227			
44 Rockland	136,803	131,834	4,969			
45 St. Lawrence	111,239	109,082	2,157			
46 Saratoga	89,096	88,134	962			
47 Schenectady	152,896	150,688	2,208			
48 Schoharie	22,616	22,410	206			
49 Schuyler	15,044	14,974	70			
50 Seneca	31,984	31,235	749			
51 Steuben	97,691	97,176	515			
52 Suffolk	666,784	650,112	16,672			
53 Sullivan	45,272	44,434	838			

[Vol. 609]

32 Niagara	242,269	235,677	6,592			
33 Oneida	264,401	259,330	5,071			
34 Onondaga	423,028	414,770	8,258			
35 Ontario	68,070	67,410	660			
36 Orange	183,734	179,873	3,861			
37 Orleans	34,159	33,845	314			
38 Oswego	86,118	85,356	762			
39 Otsego	51,942	51,588	354			
40 Putnam	31,722	31,006	716			
41 Queens	1,809,578	1,733,081	76,497			
42 Rensselaer	142,585	140,933	1,652			
43 Richmond	221,991	216,764	5,227			
44 Rockland	136,803	131,834	4,969			
45 St. Lawrence	111,239	109,082	2,157			
46 Saratoga	89,096	88,134	962			
47 Schenectady	152,896	150,688	2,208			
48 Schoharie	22,616	22,410	206			
49 Schuyler	15,044	14,974	70			
50 Seneca	31,984	31,235	749			
51 Steuben	97,691	97,176	515			
52 Suffolk	666,784	650,112	16,672			
53 Sullivan	45,272	44,434	838			
54 Tioga	37,802	37,610	192			
55 Tompkins	66,164	64,227	1,937			
56 Ulster	118,804	116,818	1,986			
57 Warren	44,002	43,594	408			
58 Washington	48,476	48,135	341			
59 Wayne	67,989	67,344	645			
60 Westchester	808,891	782,179	26,712			
61 Wyoming	34,793	34,534	259			
62 Yates	18,614	18,552	62			
Total	16,782,304	16,240,786	541,518			

(2-2: New York)

FORM DC-100 (4-1-60)

MORE

[fol. 606]

292

606

TABLE XIX

CENSUS OF 1960

(Supplied by the U. S. Bureau of the Census)

U.S.DEPARTMENT OF COMMERCE
Bureau of the Census
Washington 25, D. C.

CITIZENSHIP OF THE POPULATION OF NEW YORK CITY: 1960

County	1960 Population		
	Total	Citizen	Alien
Bronx	1,424,815	1,368,207	56,608
Kings	2,627,319	2,518,510	108,809
New York	1,698,281	1,584,069	114,212
Queens	1,809,578	1,733,081	76,497
Richmond	221,991	216,764	5,227
New York City	7,781,984	7,420,631	361,353

[fol. 611] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

#28089

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, OWEN M. QUINN, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

APPEARANCES:

Robinson, Silverman, Pearce & Aronsohn and Max Gross, Attorneys for Plaintiffs, 230 Park Avenue, New York, N. Y., Leonard B. Sand, Of Counsel.

Louis J. Lefkowitz, Attorney General of the State of New York, Attorney pro se and Attorney for Caroline K. Simon, Secretary of State of the State of New York, The Capitol, Albany, New York and 80 Centre Street, New York, N. Y., Irving Galt, Assistant Solicitor General, George C. Mantzoros, Sheldon Rabb, Assistant Attorneys General, Of Counsel.

[fol. 612] Leo A. Larkin, Corporation Counsel of the City of New York, Attorney for Defendant Paul R. Screvane,

President of the City Council of the City of New York, and Defendants Denis J. Mahon, et al., Commissioners of the Board of Elections of the City of New York, Municipal Building, New York, N. Y., Benjamin Offner, George Dwight, Of Counsel.

George W. Percy, Jr., County Attorney for the County of Suffolk, New York, Attorney for Defendant William J. Leonard, Chairman, Board of Supervisors, Suffolk County, Suffolk County Center, Riverhead, New York, Stanley S. Corwin, Assistant County Attorney, Of Counsel.

Bertram Harnett, County Attorney for the County of Nassau, Attorney for Defendant Eugene H. Nickerson, Chairman, Board of Supervisors, Nassau County, Old County Courthouse, Mineola, New York, Douglas P. Null, Senior Deputy County Attorney, Of Counsel.

Francis J. Morgan, County Attorney of Westchester County, Attorney for Defendant Leonard Berman, Chairman, Board of Supervisors, Westchester County, County Office Building, White Plains, New York, Irving Libenson, Assistant County Attorney, Of Counsel.

Before: WATERMAN, Circuit Judge, RYAN and LEVET, District Judges.

OPINION—August 16, 1962

LEVET, D.J.

[fol. 613] This is an action for a judgment declaring that the constitutional and statutory provisions of the State of New York governing the apportionment of Senate and Assembly districts are unconstitutional.

The previous history of the proceedings in this Court appears in *W.M.C.A., Inc.* v. *Simon*, D.C.S.D.N.Y. 1961, 196 F. Supp. 758, and the action here is the same as the one before this three-judge court in 202 F. Supp. 741 (1962). The original decision was a dismissal of the complaint.

Following the decision in *Baker* v. *Carr*, 1962, 369 U.S. 186, the Supreme Court, on June 11, 1962, vacated the judgment entered upon the opinion by us contained in 202

F. Supp. 741 and remanded the case "for further consideration in the light of *Baker* v. *Carr*." 370 U. S. 190 at 191.

Accordingly, after due notice to the parties, a hearing was held by this Court on August 1, 1962 at which time the proofs offered by the parties (in so far as we believed to have been relevant) were submitted and extensive oral argument on the merits of the claim was heard and briefs of the parties submitted. Now after deliberation and reconsideration in the light of *Baker* v. *Carr, supra,* we find and conclude as follows:

[fol. 614] Facts

1. The New York State constitutional and statutory provisions are set forth as exhibits in the complaint. (Constitution, Art. 3, Sections 2, 3, 4, 5. Statutes—State Law Sections 120-123.)

2. There is no failure by the legislature to comply with the State Constitution and only the so-called malapportionment of Senatorial and Assembly districts is here involved. (Minutes of Nov. 15, 1961, pp. 32-33.)

3. No purposeful discrimination against any race, religion, creed or sex or national origin is claimed by plaintiffs. (Minutes August 1, 1962, pp. 31, 32.) The whole objection of plaintiffs is that there is not fair representation of urban areas. (Id. at p. 32.)

The plaintiffs' claim is that the Constitution of the State of New York is unconstitutional under the Federal Constitution. (Id. at pp. 127, 128.)

As to the City of New York, its counsel conceded that there was no allegation of discrimination "other than a discrimination arising from financial matters either in the collection of taxes or the distribution of taxes or funds collected by the State and distributed throughout the whole State to the various communities and cities." (Id. at p. 42.)

[fol. 615] 4. We take judicial notice of the following:

The revised Constitution of 1894 containing the present apportionment provisions was submitted to the voters on November 6, 1894 and was approved by a vote of 410,697

to 327,402; the legislative apportionment was approved by a vote of 404,335 to 350,625. See Legislative Manual, New York, 1961-1962, page 289. On November 7, 1916, on a vote to revise the Constitution and amend the same, the vote was 506,563 for and 658,269 against. Id. at p. 292. On November 5, 1957, the vote for a convention to revise the Constitution and amend the same was 1,242,568 for and 1,368,063 against. Id. at p. 309.

5. We also, on a similar basis, note:

New York City with a population of 7,781,984 or 46.0% of the state's population of 16,782,304, has 65 assemblymen or 43.3% of the total assembly, and 25 senators or 43.1% of the total number of senators, while the counties other than those in New York City, with 54.0% of the population, have 56.7% of the total assembly and 56.9% of the senate seats.

6. The courts of the State of New York have approved the present methods of apportionment. *Matter of Sherrill* v. *O'Brien*, 1907, 188 N.Y. 185, 81 N.E. 124; *Matter of Fay*, 1943, 291 N.Y. 198, 52 N.E. 2d 97; See also *Matter of Dowling*, 1915, 219 N.Y. 44, 113 N.E. 545.

[fol. 616] 7. A summary of the provisions of the State Constitution and statutes relative to Senatorial apportionment is substantially as follows:

> "The Senate districts are created primarily on the basis of citizen population. A 'ratio' is determined by dividing the citizen population of the State by 50 (the number of Senators); Senate districts are then formed by combining or dividing counties so that each district contains approximately this number (the 'ratio') of citizens. The Constitution provides that each district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact a form as practicable. There are four further provisos: When any county is entitled to more than three Senators, the Senate is enlarged from its minimum size (50) by the number of these additional Senators; no county can have four or more Senators unless it has a full population ratio for each; no county shall have

more than one third of all the Senators; and no two counties that are adjoining or separated by one public waterway shall have more than half of all the Senators. (The last two of these provisos are inoperative, since no counties are entitled to that number of Senators.)" (Opening Memorandum For Defendants Simon and Lefkowitz Before The Statutory Court On Remand From the Supreme Court of the United States, pp. 4-5.)

8. A summary of the provisions of the State Constitution and statutes relative to Assembly apportionment is substantially as follows:

"The total number of Assemblymen is fixed at 150, with every county except Hamilton (which shares one Assemblyman with Fulton County) entitled to one Assemblyman. Sixty-one seats are thus accounted for. The remaining 89 seats, however, are apportioned in [fol. 617] this manner: The citizen population of the State is divided by the total number of Assemblymen, and the quotient thus achieved becomes the 'ratio.' Every county whose citizen population equals 1½ times the 'ratio' is entitled to a second Assemblyman. The rest of the seats are then apportioned among those counties with citizen populations greater than twice the 'ratio.' Seats apportioned on remainders are apportioned in order of highest remainders, with the proviso that no county shall have more Assemblymen than a county with a larger citizen population." (Opening Memorandum For Defendants Simon and Lefkowitz Before the Statutory Court On Remand From the Supreme Court of the United States, p. 4.)

While more than one Senate or Assembly district can be contained within the whole of a single county, and while a given Senate district may consist of more than one county, no county border line can be broken in the formation of either type of district.

9. Certain statistical data were submitted by the parties in a *Stipulation* filed on August 1, 1962 and, by order of

the court made a part of the record; Plaintiffs' Exhibits 1 through 7 also contain statistical tables. A copy of Tables IV (Appendix A) and VIII (Appendix B) from the said stipulation are appended hereto. These projected statistics of an apportionment based on the 1960 census appear to state the basis of plaintiffs' claims.

10. In the appendices hereto we attach (a) a map of the present Assembly Apportionment, the original of which [fol. 618] is contained between pp. 748-749 of the Legislative Manual of the State of New York for the year 1960 (Appendix C), (b) a map of the present Senate Apportionment, the original of which is contained in the same publication between pp. 712-713 (Appendix D), (c) a Table of the Population of State of New York, County Recapitulations, the original of which is contained on pp. 1,030 and 1,031 of the Legislative Manual of the State of New York for the year 1961-1962 (Appendix E). We take judicial notice of the facts therein contained.

Issues

The questions for determination by this Court are as follows:

First, do the undisputed facts constitute "invidious discrimination" against the plaintiffs and those similarly situated under the decision of the United States Supreme Court in *Baker* v. *Carr, supra; second*, assuming an affirmative answer to the first question, to what relief are plaintiffs entitled?

Baker v. Carr

We are unable to conclude that the *Baker* v. *Carr* decision, *supra*, has invalidated the particular type of apportionment provisions which are here attacked. We recognize the force of the *Baker* decision to the full extent indicated by the opinions of the Court. We acknowledge the validity of jurisdiction as we did before (202 F. Supp. 741). We [fol. 619] accept the mandate of justiciability. We test the New York apportionment provisions by such standards as we are able to ascertain.

However, we are unable to premise an invalidity of the provisions of the State of New York upon the *Baker* v. *Carr* determination by reason of the absence of applicable indicia.

1. *Mr. Justice Douglas* concurring in *Baker* v. *Carr, supra,* stated:

> "The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' See *Skinner* v. *Oklahoma,* 316 U.S. 535, 541. Universal equality is not the test; there is room for weighting. As we stated in *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489, 'The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.'" (p. 244-245.)

2. *Mr. Justice Clark* in his concurring opinion in *Baker* v. *Carr, supra,* wrote:

> "I take the law of the case from *MacDougall* v. *Green,* 335 U.S. 281 (1948), which involved an attack under the Equal Protection Clause upon an Illinois election statute. The Court decided that case on its merits without hindrance from the 'political question' doctrine. Although the statute under attack was upheld, it is clear that the Court based its decision upon the determination that the statute represented a rational state policy. It stated:
>
> 'It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to [fol. 620] deny a State the power to assure a *proper* diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' Id., at 284. (Emphasis supplied.)" (p. 251-252.)

3. *Mr. Justice Stewart* in his concurring opinion in *Baker* v. *Carr*, *supra*, stated:

"The Court today decides three things and no more: '(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) . . . that the appellants have standing to challenge the Tennessee apportionment statutes.' *Ante*, pp. 197-198.

"The complaint in this case asserts that Tennessee's system of apportionment is utterly arbitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother HARLAN, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter.' *Post*, p. 332. The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.' *Post*, p. 334. And contrary to the suggestion of my Brother DOUGLAS, the Court most assuredly does not decide the question, 'may a State weight the vote of one county or one district more heavily than it weights the vote in another?' *Ante*, p. 244.

"In *MacDougall* v. *Green*, 335 U.S. 281, the Court held that the Equal Protection Clause does not 'deny a State the power to assure a proper diffusion of [fol. 621] political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' 335 U.S., at 284. In case after case arising under the Equal Protection Clause the Court has said what it said again only last Term—that 'the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently

than others.' *McGowan* v. *Maryland,* 366 U.S. 420, 425. In case after case arising under that Clause we have also said that 'the burden of establishing the unconstitutionality of a statute rests on him who assails it.' *Metropolitan Casualty Ins. Co.* v. *Brownell,* 294 U.S. 580, 584.

"Today's decision does not turn its back on these settled precedents." (pp. 265-266.)

4. *Mr. Justice Harlan,* in his dissent to the remand in the case at bar (370 U.S. 190 at 191), stated that *Baker* v. *Carr* does not indicate "any guidelines" to be followed by lower courts in deciding cases such as the instant one.

Counsel for plaintiffs has conceded that "There is nothing in the explicit opinion of Baker against Carr which would indicate how ultimately the cases were to be resolved on the merits," although counsel contended that there was "much in Baker against Carr which is implicit." (Minutes, August 1, 1962, p. 107.) This Court is unable to discern this result for which plaintiffs here argue.

[fol. 622] Constitutionality

The principle that there is a presumption in favor of the constitutionality of a statute and the principle that a violation must be clear before a federal court of equity will lend its power to the disruption of the state election processes (*Sanders* v. *Gray,* D.C.N.D. Ga. 1962, 203 F. Supp. 158, 170) have been re-enunciated in apportionment decisions rendered since the *Baker* v. *Carr* determination.

1. In *Caesar* v. *Williams,* Supreme Court of the State of Idaho, April 3, 1962, —— Idaho ——, 9 Idaho Capital Report 161, McFadden, J. wrote:

"In considering the question of the constitutionality of these acts, certain fundamental rules at all times must be kept in mind. The burden of showing the unconstitutionality of a statute is upon the party asserting it. Eberle v. Nielson, 78 Idaho 572, 306 P. 2d 1083; Rich v. Williams, 81 Idaho 311, 341 P. 2d 432. This court is without power to invalidate or nullify a

constitutional act of the legislature; if the legislature does not clearly violate the Constitution, this court must and will uphold it. Padgett v. Williams, 82 Idaho 114, 350 P. 2d 353. Every reasonable presumption must be indulged in favor of the constitutionality of a statute. Robinson v. Enking, 58 Idaho 24, 69 P. 2d 603; Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P. 2d 105." (9 Idaho Capital Report 161 at 164.)

2. In *Maryland Committee for Fair Representation* v. *Tawes,* Md. Cir. Ct., Anne Arundel County, May 24, 1962, —— Md. —— —— ——, Judge Duckett wrote in part:

[fol. 623] "Every intendment must be resolved in favor of constitutionality and the burden of showing unconstitutionality is on the petitioners"

citing *McGowan* v. *Maryland,* 366 U.S. 420-426; *Johns Hopkins University* v. *Williams,* 199 Md. 382, 86 A. 289; *Norris* v. *Baltimore,* 172 Md. 667, 192 A. 531.

3. In *Toombs* v. *Fortson,* D.C.N.D. Ga., 1962, 205 F. Supp. 248, 256, the Statutory Court stated:

"• • • there is an additional factor of importance when the Federal Court is called upon to invalidate solemnly enacted State constitutions and laws. Bearing in mind the plain lesson laid down by the Supreme Court repeatedly that an *alleged violation of Constitutional rights by the State must be clear* before a Federal court of equity will lend its power to the disruption of the State's election processes, • • • ." (Emphasis inserted.)

[fol. 624] Other Decisions

Certain cases decided since *Baker* v. *Carr* involved substantial discrepancies between existing legislative apportionments and pre-existing state constitutional provisions. See *Caesar* v. *Williams,* Supreme Court of the State of Idaho, April 3, 1962, —— Idaho —— —— 9 Idaho Capitol Report 161; *Harris* v. *Shanahan,* District Court of Shawnee County, Kansas, Second Division, May 31, 1962, ——

Kansas ——; *Maryland Committee for Fair Representations* v. *Tawes*, State Court of Appeals, Maryland, April 1962, —— Md. —— (Failure of legislature to comply with State Constitution and convene a Constitutional Convention as approved by voters); *Lein* v. *Sathre*, D.C.D.N.D., Southwestern Division, May 31, 1962, —— F. Supp. —— (Statutory Court); *Moss* v. *Burkhart*, D.C.W.D. Okla., June 19, 1962, —— F. Supp. —— (Statutory Court); *Start* v. *Lawrence*, Commonwealth Court of Pa., June 13, 1962, No. 2536 Equity Docket and No. 187 Commonwealth Docket 1962; *Baker* v. *Carr*, D.C.M.D. Tenn., Nashville Div., June 22, 1962, —— F. Supp. ——; *Mikell* v. *Rousseau*, Supreme Court, Chittenden County, Vermont, May Term, 1962, —— Vt. ——; *Sweeney* v. *Notte, Jr.*, Sup. Ct. of Rhode Island, C.Q. No. 643, —— R.I. ——; *Sims* v. *Frink*, D.C.M.D. Ala., 1962, 205 F. Supp. 245 (Statutory Court).

Other cases post *Baker* v. *Carr* involved apportionment arrangements with great disparities, lack of any rational [fol. 625] basis and wanting in other respects and thus were far different than those of the present case. Those cases have no applicability here. See *Toombs* v. *Fortson*, D.C.N.D., Ga., 1962, 205 F. Supp. 248 (Statutory Court); *Sanders* v. *Gray*, D.C.N.D., Ga., April 28, 1962, 203 F. Supp. 158 (Statutory Court); *Scholle* v. *Hare*, Sup. Ct. of Michigan, June, 1962, —— Mich. ——; *Fortner* v. *Barnett*, Chancery Court of the First Judicial District of Hinds County, Miss., —— Miss. ——.

Tests

Tests for "invidious discrimination" have been held to include the following:

(1) Rationality of state policy and whether or not the system is arbitrary.

(2) Whether or not the present complexion of the legislature has a historical basis.

(3) Whether there lies within the electorate of the State of New York any possible remedy (if gross inequalities exist.)

(4) Geography, including accessibility of legislative representatives to their electors.

(5) Whether the Court is called upon to invalidate solemnly enacted State Constitutions and laws.

Toombs v. *Fortson*, D.C.N.D. Ga. 1962, 205 F. Supp. 245; *Sanders* v. *Gray*, D.C.N.D. Ga. 1962, 203 F. Supp. 158; [fol. 626] *Maryland Committee for Fair Representation* v. *Tawes*, Md. Circuit Court, Anne Arundel County, Maryland, May 24, 1962, —— Md. ——, —— A. ——; *Baker* v. *Carr*, 1962, 369 U.S. 186, 258, 259.

1. *Rationality and Lack of Arbitrariness*

The provisions of the State Constitution (Art. 3 Sec. 5) in reference to *Assembly Districts* are basically as follows:

(a) Apportionment among the several counties of the state, "as nearly as may be according to the number of their respective inhabitants, excluding aliens"

(b) Every county except Hamilton is entitled to one member.

After establishing a quotient ratio for the whole state further provisions are as follows:

(c) Each county containing less than a ratio and one-half over receives one member.

(d) All other counties (i.e. those having more than a ratio and a half) receive a second member.

(e) The remaining members are apportioned to the counties having the highest remainders in the order thereof.

Nothing in these provisions is arbitrary unless the ingredient of geographical allowance of a minimum of one assemblyman per county is so considered. Certainly there is no classification which treats urban counties differently [fol. 627] from other counties. The net result is that assemblymen (subject to the minimum provision per county, like the minimum provision for members in the Federal House of Representatives) are in fact substantially based on citizen population.

The provisions of the State Constitution (Art. 3 Sections 2, 3, and 4) in reference to the Senate are basically as follows:

(a) Fifty senatorial districts are established (section 3).

(b) Such districts are, after census returns at specified intervals, to "be so readjusted or altered so that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and be in as compact form as practicable" (section 4). (Plaintiffs make no claim that the statutes do not reflect the state constitutional provisions.)

Certain other requirements augment or implement the foregoing provisions:

(c) No county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. (Certain limitations, not too pertinent here prohibit divisions of towns and cities; however, it is noted that counties, towns, etc. which may be included in either of two districts, "shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens".)

(d) No county shall have four or more senators unless it shall have a full ratio for each senator.

[fol. 628] (e) Other provisions which today have absolutely no factual application provide that (i) no county shall have more than one third of all the senators and (ii) no two adjoining counties, or counties which are separated only by public waters, shall have more than one-half of all the senators.

Apparently plaintiffs complain of the so called "full ratio rule" the gist of which is as follows:

I. "No county shall have four or more senators unless it shall have a full ratio for each senator." N.Y. Const. Art. II § 4.

II. " . . . except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole

number of senators shall be increased to that extent." N.Y. Const. Art. III § 4.

The provisions above mentioned do not appear arbitrary or irrational. Unless senatorial districts are to be subject to repeated and relatively frequent readjustments, some practicable means of addition of more senators must be provided.

As stated by Judge Chase in *Matter of Dowling*, 1916, 219 N.Y. 44, 51: "The exception is given for one, and only one purpose, and that is to prevent counties having three or more senators from obtaining a larger number of senators at the expense of the counties of the state not having three or more senators." These provisions are designed to effectuate administration of the senatorial electorate, and designed to meet accessibility, and practicability. No [fol. 629] proof was submitted by plaintiffs that the senatorial districts, aside from some variance in citizen population were otherwise subject to criticism.

The system is not irrational. It clearly gives weight to population within the state's counties which forms a basis for the ingredient of area, accessibility and character of interest.

Such an arrangement is not arbitrary. It has factors adapted to the needs of the State of New York constituted as it is of urban, suburban and rural areas, with congestion of population in one spot, with areas of lesser intensity in other locations and with sparsely settled spaces more remote from the centers of population. All ingredients are present, there is no arbitrariness in formulae or in the result thereof.

2. *Historical Basis*

The present provisions for apportionment are of historic origin. In New York, the county is a classic unit of governmental organization and administration. New York has consistently emphasized county government and the county unitary approach.

Charles H. Beard states that in most cases the county units in this country "bear the imprint of precedents dating back to medieval England". (American Government and Politics, MacMillan Company, 1949, p. 787.)

[fol. 630] As explained by *Ferguson* and *McHenry*:

"• • • When the American colonies were first settled, England was divided into shires, which, in turn, were subdivided into parishes, hundreds, manors, and boroughs. When transplanted to the Colonies, the term 'shire' gave way to its synonym 'county'. The County which was first instituted in Virginia, later became the primary unit of local government in the South, the middle states established both counties and townships: New England used counties and towns, but the former were relegated to a subordinate position." (The American System of Government, McGraw-Hill Book Company, Inc., New York, New York, 6th Ed., 1961, pp. 668, 669.)

See also Fairlie and Kneier, County Government and Administration, Century Co., New York, 1930, pp. 1-38.

Professor *Cullen B. Gosnell* writes:

"• • • Local Government in the United States can be traced directly to England. The County grew out of the Shire. While the County was not in vogue in England until after the Norman Conquest, it had become well established before the colonization of America." (State and Local Government in the United States, New York, Prentice-Hall, Inc., 1951, p. 14).

James Bryce wrote:

"In the middle States of the Union, Pennsylvania, New Jersey and New York, settled or conquered by Englishmen somewhat later than New England, the town and town-meeting did not as a rule exist, and the county was the original basis of organization." (American Commonwealth, MacMillan Company, 1926, Vol. 1, p. 599.)

Bryce also stated:

"The County is perhaps to be regarded at least in New York, Pennsylvania and Ohio, as the true unit, and the townships (for so they are usually called) as its subdivisions." (Ibidem p. 600.)

[fol. 631] Professor *Edward P. Cheyney*, of the University of Pennsylvania discussing "The English County and Its Officers, (1600-1650)" stated: "The oldest, most stable and most important unit of local government was the shire, or county." (European Background of American History, 1300-1600, Harper and Brothers, 1904, p. 261.)

Paul W. Wager, in County Government Across the Nation, University of North Carolina Press, 1950, p. 157, observed: "During the Colonial period there evolved in New York a system of local government which in its main features, has been perpetuated." *

[fol. 632]

Constitution of 1777

All of this was recognized by the makers of the constitution of 1777, adopted during the progress of the Revolution in a state in which perhaps one third of the military operations of that war took place. This constitution (Section IV) provided for an assembly of seventy members *"to be annually chosen in the several counties"* (emphasis added), and certain numbers of members for each county were then specified. Section V which followed contained provisions for a census after the termination of the war and at seven year intervals thereafter and for adjustment of the representation of each county. No provision for *omission* of any county from some representation or for combining one county with another appear.

The same constitution (Sections X, XI, XII) provided for a senate of twenty-four freeholders elected for four years, and to be set up in classes so that one quarter were

* Each county is allotted one representative in the lower chamber of 23 states; to wit, Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah and Wyoming. (Harvey, Lashley G., Reapportionments of State Legislatures, 17 Law and Contemporary Problems, 364.) It may also be noted that seven of these states were among the original 13 states of this union. Certain states also assure one senator for each county, to wit Connecticut, Idaho, Maine, Maryland, Montana, New Jersey, Oregon, South Carolina, Vermont and Wyoming. (Ibidem.)

reelected each year. The state was divided for the election of senators into "four great districts"; and the counties to be contained in each district specified as well as the number of senators for each of these "great" districts. After mentioning the state census to be taken, as for assem- [fol. 633] bly purposes, the 1777 constitution provided for reapportionment, "as near as may be, to the number of freeholders in each district" and the addition of a senator to any district in which the number of electors had increased one twenty-fourth part of the whole number of electors, which by the said census, shall be found to be in this state.

Amendments to the Constitution of 1777

By delegates to a State convention in 1801 the number of the members of the assembly was increased to one hundred with a provision that the number should never exceed one hundred and fifty. The legislature was directed to apportion the "said one hundred members of the assembly *among the several counties of this state* (emphasis inserted) as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year.". (New York State Constitution Annotated, New York State Constitutional Convention Committee 1938, Part II pp. 21, 22).

At the same time the number of senators was fixed at thirty-two so that the entire number (32) are apportioned among the "four great districts" as "nearly as may be, according to the number of electors qualified to vote for senators, which shall be found to be in each of the said [fol. 634] districts." (Ibidem p. 22).

Constitution of 1821

A constitutional convention of 1821 submitted a new constitution which was approved by the voters in 1822 and took effect December 31, 1822. This constitution (Ibidem p. 24) provided for a senate of 32 members and an assembly of 128 members. Article 1, Section 5 divided the state into 8 senatorial districts, specified the counties in each and stated that each district should choose four senators.

Section 6 provided for reapportionment every ten years so that each district shall contain, as nearly as may be, an equal number etc. Districts were to consist of contiguous territory, and no county was to be divided in the formation of a senate district.

Section 7 provided that the members of the assembly shall be chosen by counties as nearly as may be, according to the number of inhabitants excluding aliens etc. Every county was to be entitled to one member of the assembly and no new county was to be erected unless its population shall entitle it to a member.

Constitution of 1846

The Constitution of 1846 adopted on November 3, 1846 (Ibidem p. 44) abandoned the groupings known as "four [fol. 635] great districts" and set up thirty-two separate senatorial districts in each of which one senator was to be elected, (Art. III, Section 3). Provisions as to equalization of numbers of inhabitants, contiguous territory, and prohibition of division of a county unless entitled to two or more senators appear. (Section 4).

The members of the assembly were to be apportioned *among the several counties*, as nearly as may be, according to the number of inhabitants etc. but the same reservations for each county as before were continued (Section 5).

Constitution of 1894

No further changes were made in apportionment matters until the constitution of 1894 was passed and adopted by the voters as heretofore stated. The present provisions are substantially the same and are elsewhere discussed.

In concluding this discussion of historic origins, it is fair to state that the basic pattern of New York's apportionment provisions are historic in character, fitted to the nature of the governmental development of the Empire State.

3. Availability of Political Remedy

The vote in 1957 on the call for a constitutional convention was heralded as an issue of apportionment. Gov-

[fol. 636] ernor Harriman stated that the most urgent constitutional reform needed was "to elect one house of the legislature on the basis of population to give big cities fuller representation." New York Times, Sept. 7, 1957, p. 1, col. 8. See New York Times, Sept. 24, 1957, p. 29, col. 1, Oct. 29, 1957, p. 22, col. 5. According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the total State population.

The 10 most heavily populated counties had a population of 11,937,406, or 73.5% of the citizen population of the state. Thus, the majority chose not to convene a constitutional convention.

This tends to negate any compelling circumstances requiring the intervention of federal equity power.

Article XIX, Section 2, of the present constitution provides that "at the general election to be held in the year nineteen hundred fifty seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question 'Shall there be a convention to revise the constitution and amend the same?' shall be submitted to and decided by the electors of the State." In case a majority decides in favor of this question, delegates are to be elected and a convention held. Delegates are to be chosen as follows: each senatorial district elects [fol. 637] 3 delegates; the electors of the state elect 15 delegates-at-large.

It may be noted that it would be entirely possible for the ten most populous counties mentioned in the next paragraph to control a constitutional convention.

4. Geographical Discrimination

The fact is that the ten most heavily populated counties in the State (Kings, Queens, New York, Bronx, Nassau, Erie, Westchester, Suffolk, Monroe and Onondaga) have, under the current apportionment, 38 senate seats, 65.5% of all the senate and 93 assembly seats, 62.0% of all assembly seats. When the legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 senate seats and 93 assembly seats, 64.9% and

61.3% respectively of the two Houses (minutes, August 1, 1962, pp. 153, 154).

As already indicated geography, accessibility, a proper diffusion of political initiative as between a state's thinly populated counties and those having concentrated masses, have not been cast out as proper factors in apportionment methods.

The six counties in which plaintiffs reside contain 56.2% of the citizen population of the State, but these counties comprise only 3.1% of the area of the state. Bronx, Kings, [fol. 638] New York and Queens are the smallest counties in the state. Nassau is the ninth smallest county.

Another factor worthy of consideration is the fact that the interests of the "upstate" counties may be diverse while those of the city districts may be united. Ninety-seven percent of the State's area is outside the six counties in which the plaintiffs reside.

The 40th Senatorial District includes St. Lawrence, Clinton and Franklin counties, an area totalling 5,511 square miles which is larger than the State of Connecticut. St. Lawrence County alone covers 2,767 square miles, which is an area larger than the State of Delaware.

Economic and social matters, extensive resources and their developments, roads, school systems, welfare and other matters emphasize the necessity of some geographic consideration in a state of the size and character of New York. It is arguable that if strict population standards were adopted certain undesirable results might follow such as an increase in the size of the legislature to such an extent that effective debate may be hampered or an increase in the size of districts to such an extent that contacts between the individual legislator and his constituents may become impracticable. The possibility of these results, however, is not determinative as to the issues raised in the case at bar.

[fol. 639]

5. Invalidation of a State Constitutional Enactment

Here the plaintiffs seek to invalidate not a mere statute but a state constitutional provision duly propounded and

adopted by a Constitutional Convention in 1894. Moreover, these provisions were solemnly ratified as shown above by the voters who since have declined on a number of occasions to vote for a change. This court is, of course, bound to give supremacy to the U. S. Constitution over a State Constitution, but unless the invalidity is clear and definite, we are reluctant to overthrow this choice of the electors of this state.

In this connection we may well heed the wise admonitions of distinguished members of the United States Supreme Court who have spoken as follows:

> "The traditions and habits of centuries were not intended to be overthrown when that amendment [the Fourteenth] was passed." Opinion of Mr. Justice Holmes in *Interstate Railway Co.* v. *Massachusetts*, 1907, 207 U.S. 79, 87.
>
> "The Constitution as a continuously operating Charter of Government does not demand the impossible or the impractical." Opinion of Chief Justice Stone in *Hirabayashi* v. *United States*, 1943, 320 U.S. 81, 104. [fol. 640] ". . . [T]he legislature, acting within its sphere, is presumed to know the needs of the people of the State." Opinion of Chief Justice Hughes in *Townsend* v. *Yeomans*, 1937, 301 U.S. 441, 451.

Conclusions

We are of the opinion and hereby conclude that

(1) The plaintiffs have not shown by a fair preponderance of the relevant evidence that "invidious discrimination" exists.

(2) The apportionment provisions of the State of New York are rational, not arbitrary, are of substantially historical origin, contain no geographical discrimination, permit an electoral majority to alter or change the same and are not unconstitutional under the relevant decisions of the United States Supreme Court.

(3) The defendants who have opposed this action are entitled to a dismissal of the complaint on the merits as

against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims.

(4) No costs should be allowed to or against any party hereto since this is a matter of public interest and concern. [fol. 641] The foregoing constitute our findings of fact and conclusions of law. Let judgment be entered pursuant to the opinion herein.

In view of this determination there is no necessity of passing on the standing of W.M.C.A., Inc. as a party plaintiff herein.

Dated: New York, N. Y., August 16, 1962.

Richard H. Levet, U. S. D. J.

[fol. 642]

APPENDIX A TO OPINION

CLERK'S NOTE

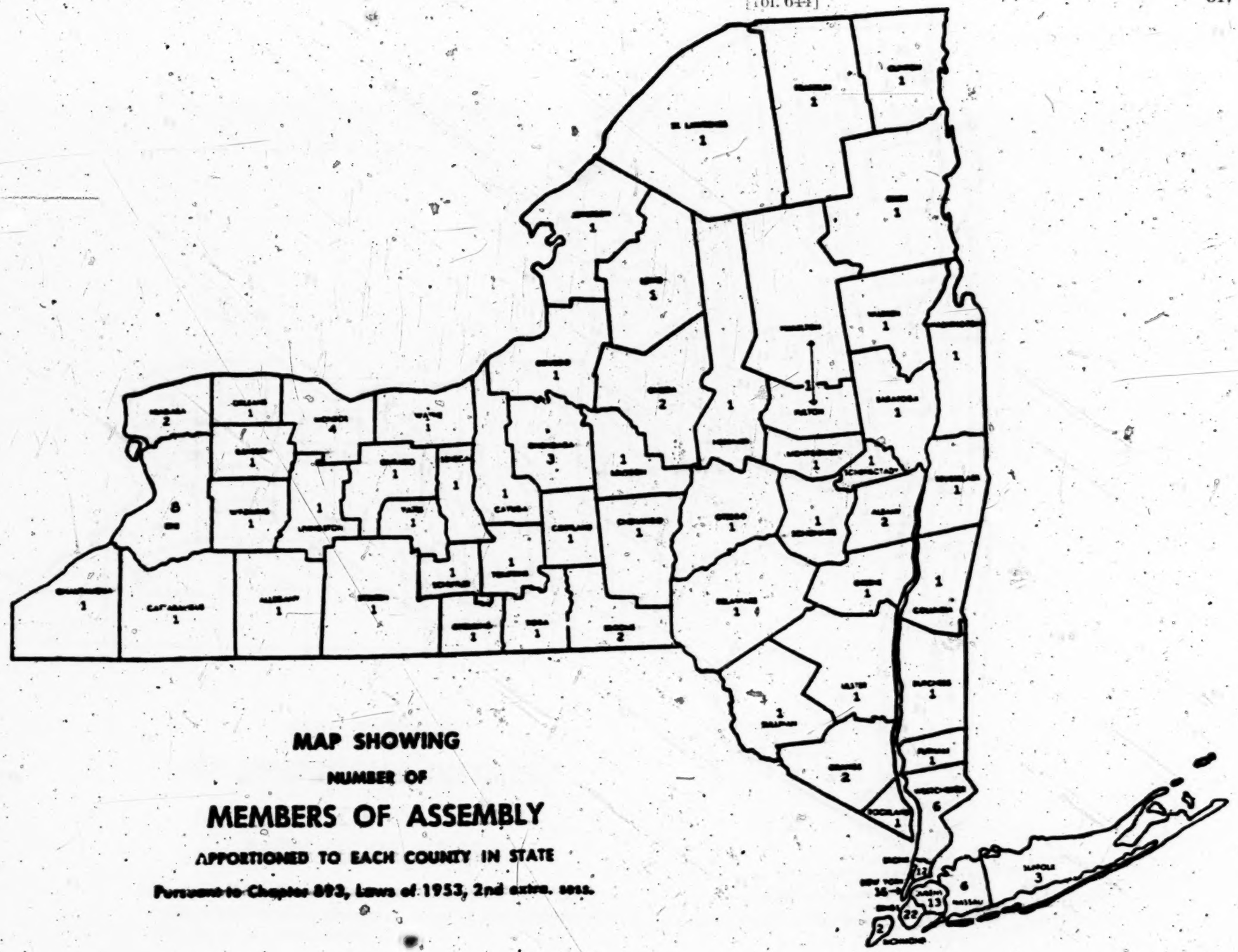
Appendix A to opinion—Table IV Showing—"The following apportionment would result if the New York State Legislature reapportioned the Senate under the present constitutional formula, on the basis of 1960 Census statistics—on basis of second ratio—(omitted in printing here). See printed side folio 528, page 234, ante.

[fol. 643]

APPENDIX B TO OPINION

CLERK'S NOTE

Appendix B to opinion—Table VIII Showing—"The following apportionment would result if the New York State Legislature reapportioned the Assembly under the present constitutional formula, on the basis of the 1960 census statistics—(omitted in printing here). See printed side folio 531, page 237, ante.



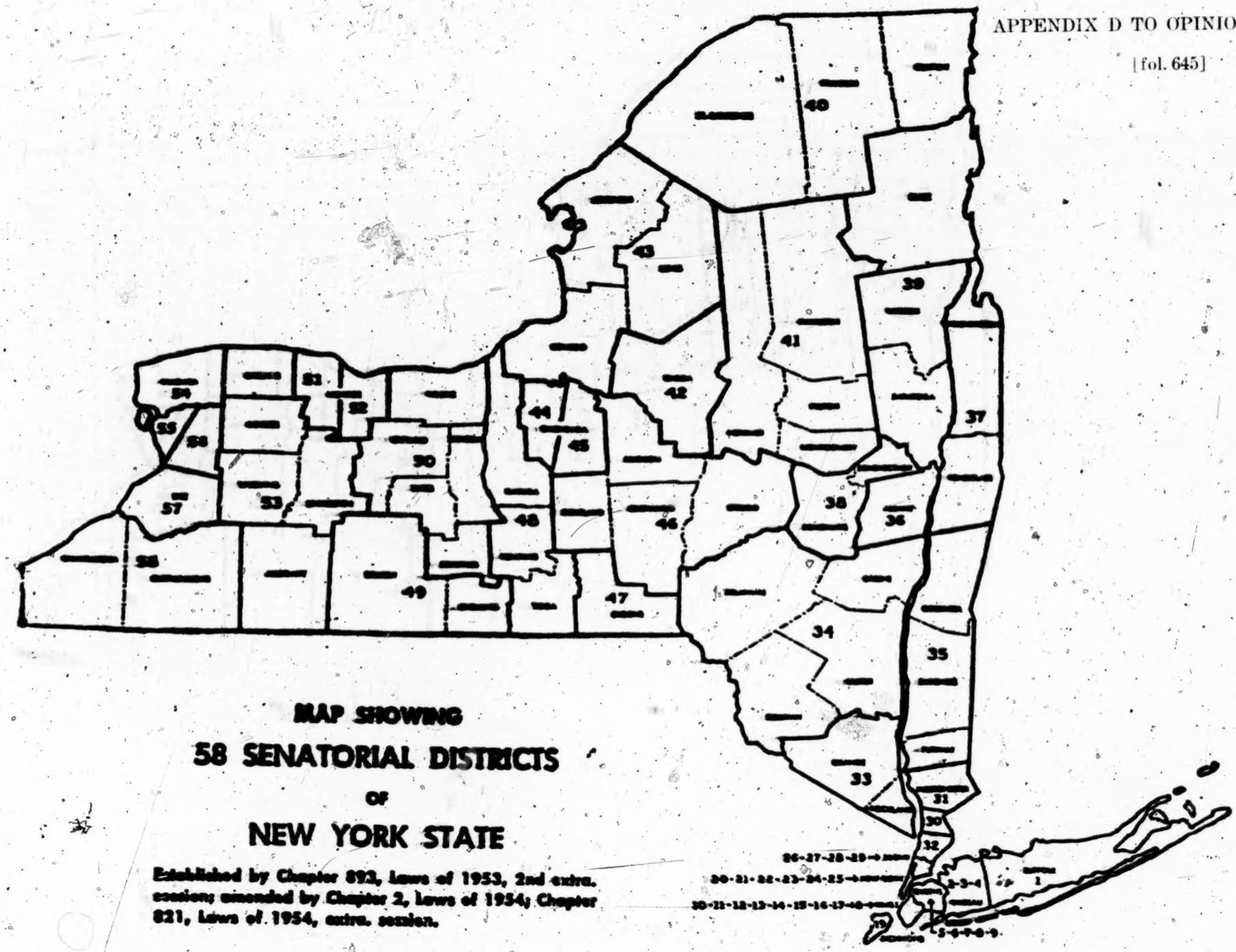
MAP SHOWING

NUMBER OF

MEMBERS OF ASSEMBLY

APPORTIONED TO EACH COUNTY IN STATE

Pursuant to Chapter 893, Laws of 1953, 2nd extra. sess.



MAP SHOWING

58 SENATORIAL DISTRICTS

OF

NEW YORK STATE

Established by Chapter 892, Laws of 1953, 2nd extra. session; amended by Chapter 2, Laws of 1954; Chapter 821, Laws of 1954, extra. session.

COUNTY RECAPITULATION

COUNTIES	Population						
	1810	1820	1830	1840	1850	1860	1900 final
Albany	100,220	100,910	707,120	211,960	221,315	229,380	272,926
Allegany	40,216	36,847	36,815	39,023	39,081	43,784	46,978
Bronx	615,000	722,666	872,168	1,265,258	1,204,711	1,451,277	1,424,815
Broome	66,641	113,010	135,000	147,022	165,749	184,666	212,661
Cattaraugus	72,736	71,228	73,778	72,208	72,652	77,901	80,187
Cayuga	66,731	66,221	66,344	64,781	65,800	70,136	75,942
Chautauqua	116,818	115,348	122,100	130,457	123,880	133,190	145,377
Chemung	20,017	25,672	72,292	74,080	72,718	86,827	98,706
Chenango	36,648	34,989	36,616	34,648	36,484	39,128	43,243
Clinton	47,361	43,888	46,143	46,685	54,000	63,622	72,732
Columbia	44,111	38,230	42,720	41,617	41,464	43,152	47,322
Cortland	30,674	29,655	31,031	31,709	33,063	37,158	41,113
Delaware	45,986	42,774	45,482	41,163	40,999	44,429	48,549
Dutchess	91,044	91,745	99,675	106,462	120,542	136,781	176,666
Erie	671,997	684,666	693,616	702,606	709,577	899,238	1,064,688
Essex	32,468	31,871	32,042	33,989	34,178	35,046	36,389
Franklin	46,183	43,541	45,915	45,994	44,206	44,880	44,742
Fulton	45,625	44,927	46,675	46,560	48,897	51,021	51,394
Genesee	40,767	37,976	43,420	44,468	44,481	47,164	53,994
Greene	30,664	28,796	28,207	25,824	27,926	28,745	32,372
Hamilton	4,481	3,870	4,242	3,929	4,188	4,105	4,267
Herkimer	44,109	44,962	48,708	54,806	59,527	61,467	66,370
Jefferson	51,696	52,280	55,776	63,574	64,003	65,527	67,226
Kings	1,799,513	2,016,586	2,202,994	2,600,401	2,698,285	2,738,175	2,837,299
Lewis	25,647	23,704	24,717	23,447	22,515	22,521	23,249
Livingston	38,437	36,330	39,284	37,340	38,510	40,257	44,063
Madison	41,742	39,535	40,307	39,790	38,598	40,214	44,635
Monroe	319,310	362,624	382,174	423,881	438,220	487,632	538,267
Montgomery	61,680	57,928	61,235	60,076	59,162	58,594	57,249
Nassau	116,828	126,129	207,640	203,053	406,748	672,765	1,300,171
New York	2,127,747	2,294,303	1,945,029	1,967,312	1,918,824	1,960,101	1,698,281
Niagara	100,550	110,708	133,437	149,329	160,110	199,992	242,269
Oneida	167,331	182,833	196,466	198,763	203,636	222,545	264,401
Onondaga	213,992	241,445	267,000	291,606	295,109	341,719	423,028
Ontario	84,625	82,633	85,240	84,278	85,267	80,172	66,079
Orange	115,118	119,344	125,629	130,353	140,113	152,285	183,734
Orleans	23,919	23,679	30,882	32,735	27,709	29,322	34,159
Oswego	73,999	71,048	71,404	69,645	71,275	77,181	86,118
Otsego	46,534	46,269	47,494	46,719	46,062	50,763	51,942
Putnam	12,767	10,997	12,800	13,744	16,556	20,307	21,722
Queens	396,737	469,042	713,891	1,079,129	1,297,634	1,550,849	1,990,579
Rensselaer	121,338	112,729	118,420	119,781	121,834	132,697	142,585
Richmond	96,634	116,271	158,224	154,346	174,441	191,555	221,991
Rockland	46,997	46,548	48,479	50,999	74,261	89,276	136,803
St. Lawrence	99,338	88,121	91,696	98,969	91,696	96,867	111,239
Saratoga	62,982	63,029	63,696	63,214	63,696	74,999	89,096
Schenectady	26,696	29,263	116,708	120,021	122,404	142,027	133,896

COUNTY RECAPITULATION — (Concluded)

COUNTIES	Population						
	1915	1920	1925	1930	1940	1950	1960 final
Schoharie	23,005	21,303	21,565	19,667	20,812	22,703	22,616
Schuyler	13,954	13,098	12,456	12,909	12,979	14,182	15,044
Seneca	25,249	24,735	25,363	24,953	25,732	29,253	31,984
Steuben	83,630	80,627	82,175	82,671	84,927	91,439	97,691
Suffolk	104,342	110,246	143,208	161,055	197,355	276,129	666,784
Sullivan	35,199	33,163	40,192	35,272	37,901	40,731	45,272
Tioga	25,549	24,212	26,111	25,480	27,072	30,166	37,808
Tompkins	36,535	35,285	39,550	41,490	42,340	59,122	66,164
Ulster	86,367	74,979	83,052	80,155	87,017	92,621	118,806
Warren	32,977	31,673	34,070	34,174	36,035	39,205	44,002
Washington	46,955	44,888	46,661	46,482	46,726	47,144	48,478
Wayne	53,476	48,827	51,785	49,995	52,747	57,323	67,989
Wchester	321,713	344,436	425,798	520,947	573,558	625,816	806,881
Wyoming	33,028	30,314	30,827	28,784	31,394	32,822	34,793
Yates	18,841	16,641	17,668	16,848	16,381	17,615	18,614
Totals	9,687,744	10,385,227	11,162,151	12,588,066	13,479,142	14,830,192	16,782,304

[fol. 647]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—v.—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

Before: WATERMAN, Circuit Judge, RYAN and LEVET, District Judges.

RYAN, D.J.:

This suit seeks to invoke the "equal protection" clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs allege that Article III (Sections 2-5) of the New York Constitution, which designates the method of geographic apportionment of Senators and Assemblymen to be elected to the State Legislature, is unconstitutional because it discriminates against the urban residents of the [fol. 648] state and, therefore, conflicts with the "equal protection" clause.

We do not find that "invidious discrimination" exists or that it is impossible to change the State Constitution by a non-judicial means.

In the Supreme Court's remand of this case, the *per curiam* opinion stated:

> " . . . we held in *Baker* v. *Carr*, 369 U.S. 186, that a justiciable federal constitutional cause of action is stated by a claim of arbitrary impairment of votes by means of invidiously discriminatory geographic classification."

In the majority opinion of *Baker* v. *Carr*, Justice Brennan stated:

> " . . . it is open to the courts to determine . . . that a discrimination reflects no policy, but simply arbitrary and capricious action."

"Invidious discrimination" is an irrational and inconstant action against a group of citizens. We do not find that the New York State apportionment policy is irrational; all that plaintiffs have illustrated is that the apportionment is not based solely on population. But as was said in *MacDougall* v. *Green*, 335 U.S. 281, 283:

> "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

There are other criteria for determining apportionment besides population. In *Baker* v. *Carr*, Justice Harlan said:

> [fol. 649] "Nothing in the federal constitution stops a state from choosing a legislative structure it thinks is best suited to the interests, temper, and customs of its people. . . . "

Such factors as the interests of counties, geography, and concentration of political power, may also be considered. The six plaintiff counties contain 56.2% of the state's population, but they contain only 3.1% of its area. (P. 23 *Opening Memorandum for Defendants—Before the Statutory*

Court On Remand from The Supreme Court of the United States.) If apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York. Even if the urban representatives were to sincerely endeavor to care for the interests of the state as a whole, it is unlikely that they might be able to fully understand the problems of the remaining vast area of the state. Each rural member of the Legislature presently represents a much greater area than his urban counterpart. If population were to be made the sole criterion of apportionment, the area per representative in certain districts would increase even further. Representatives might not adequately represent localities which were not their home and, correspondingly, the residents of these localities might lose the benefits of the democratic governmental process.

Besides this absence of "invidious discrimination", the New York State Constitution provides that the question "Shall there be a convention to revise the Constitution and [fol. 650] amend the same?" shall be put before the people every twentieth year. (Article XIX, Section 2.) In 1957, a majority voted "No" to this question even though a majority of those voting came from the urban areas. This seems to indicate that most of the voting citizens of New York are satisfied with the current system.

The situation in New York is different than in other states where the Court, in granting the relief requested, stated that one of the prime reasons was that there was no remedy within the electorate. *Toombs* v. *Fortson,* DC, Georgia.

We concur in the findings of fact and conclusions of law reached by Judge Levet; we conclude that this Court has jurisdiction on the subject matter of the suit and this jurisdiction has been exercised and, after trial and examination of the statutes involved and of the undisputed facts, we conclude that the complaint herein should be dismissed upon its merits.

Sylvester J. Ryan.

Dated: New York, N. Y., August 16, 1962.

[fol. 651]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

W.M.C.A., INC., et al.

against

SIMON, et al.

WATERMAN, Circuit Judge:

I concur, as does Chief Judge Ryan, in the findings of fact and conclusions of law contained in the Opinion of Judge Levet. I concur with my colleagues in ordering that the complaint herein be dismissed upon its merits.

Sterry R. Waterman, United States Circuit Judge.

[fol. 652] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

JUDGMENT—August 17, 1962

The Honorable Sterry R. Waterman, Circuit Judge, Sylvester J. Ryan and Richard H. Levet, Judges of this Court, in an opinion dated August 16, 1962 and filed August 17, 1962, signed by the Honorable Richard H. Levet, having concluded the defendants opposing the action entitled to a dismissal of the complaint on the merits as against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims; it is

Adjudged: The defendants opposing this action shall have judgment of dismissal of the complaint on the merits

as against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims.

Herbert A. Charlson, Clerk

Dated: New York, N. Y., August 17, 1962.

Approved: August 17, 1962.

Richard H. Levet, U.S.D.J.

[fol. 653] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY, Plaintiffs,

—against—

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City, Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 29, 1962

I. Notice is hereby given that WMCA, Inc.; R. Peter Straus; Joseph De Maio; Edward Lind; S. Thomas De-

laney; Edward C. Brown and James J. McCafferty, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order and judgment dated August 17, 1962 and entered in this action on August 27, 1962 dismissing the complaint, which complaint alleges that plaintiffs were deprived of rights guaranteed [fol. 654] by the Fourteenth Amendment by virtue of provisions embodied in the State Constitution which apportion the state senate and assembly in a manner which unfairly discriminates against residents of New York City.

This appeal is taken pursuant to 28 USC §1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

. . . . . .

[fol. 655] III. The following questions are presented by this appeal:

The legislative apportionment of New York State is based upon a formula contained in the State Constitution. Application of that formula results, and must necessarily [fol. 656] result, in gross disproportions between population and representation in both houses of the legislature. Plaintiffs established that the Assemblyman from the most populous Assembly district represents fifteen times as many citizens as the Assemblyman from the least populous Assembly district and that the Senator from the most populous Senate district represents approximately twice as many citizens as the Senator from the least populous Senate district. Plaintiffs offered to prove that the apportionment formula was adopted in 1894 specifically to limit the representation of urban residents on the grounds, among others, that such residents were morally and intellectually inferior. Plaintiffs further offered to prove that as a result of the aforesaid malapportionment, plaintiffs and others similarly situated are victims of economic discrimination and suffer other deprivations of due process of the law.

The questions presented are:

1. Whether the district court erred in dismissing the complaint on the grounds that plaintiffs had failed to prove that the apportionment invidiously discriminates against urban residents in violation of the Fourteenth Amendment.

2. Whether the district court erred in excluding all evidence offered to prove:

(a) that the apportionment formula was intended to discriminate against urban residents because they were be- [fol. 657] lieved to be unworthy of an equal voice in the state government, where the complaint alleged that the apportionment results from affirmative legislative action violative of the Fourteenth Amendment.

(b) that plaintiffs were denied due process of law because the malapportioned legislature unfairly discriminates against the underrepresented urban residents.

(c) that a consensus of expert opinion supports the view that an apportionment pursuant to which both houses of the legislature are grossly disproportionate to population is unfair and discriminatory.

Dated: New York, New York, August 29, 1962.

Leonard B. Sand, Attorney for WMCA, Inc.; R. Peter Straus, Joseph De Maio, Edward Lind, S. Thomas Delaney, Edward C. Brown, and James J. McCafferty. Address: 230 Park Avenue, New York 17, New York.

Max Gross, Esq., Concourse Plaza Hotel, Bronx, New York.

[fol. 658] Proof of service (omitted in printing).

[fol. 660]

SUPREME COURT OF THE UNITED STATES

No. 460—October Term, 1962

WMCA, INC., et al., Appellants,

vs.

CAROLINE K. SIMON, Secretary of State of the State of New York, et al.

Appeal from the United States District Court for the Southern District of New York.

ORDER NOTING PROBABLE JURISDICTION—June 10, 1963

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

LIBRARY
SUPREME COURT, U.S.

No. 70

Office-Supreme Court, U.S.
FILED
SEP 26 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Appellants,

v.

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

LEONARD B. SAND,
Robinson, Silverman, Pearce & Aronsohn,
230 Park Avenue,
New York 17, N. Y.,

MAX GROSS,
Concourse Plaza Hotel,
Bronx, New York,
Attorneys for Appellants.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented	2
United States Constitution, Federal Statutes and State Constitutional and Statutory Provisions	3
Statement	4
The Questions Presented Are Substantial	8
Conclusion	22
Appendix A	1
Appendix B	1b

CITATIONS

Cases:

Baker v. *Carr*, 369 U. S. 186	1, 7, 8, 10, 21
Baker v. *Carr*, F. Supp. (M.D. Tenn.), decided June 22, 1962	8
Brown v. *Board of Education*, 347 U. S. 413	13
Cooper v. *Aaron*, 358 U. S. 1	20
Fairbank v. *United States*, 181 U. S. 283	13
Gibson v. *Board of Public Instruction*, 170 F. Supp. 454	20
Giles v. *Harris*, 189 U. S. 475	20
Gomillion v. *Lightfoot*, 364 U. S. 339	13

PAGE

Maryland Committee for Fair Representation v. *Tawes* (Court of Appeals), April, 1962 20

Moss v. *Burkhart*, ... F. Supp. ....., (W.D. Okla.), decided June 19, 1962 ..... 14, 22

Pierce v. *Society of Sisters*, 268 U. S. 510 20

Scholle v. *Hare*, 367 Mich. 176 ..... 9, 14, 20

Toombs v. *Fortson*, 205 F. Supp. 248 ..... 9, 10, 20

WMCA v. *Simon*, 202 F. Supp. 741 ..... 1, 13, 20

United States Constitution:

Amendment XIV 2, 3, 4, 5, 6, 13, 21

Federal Statutes:

28 U.S.C. §1343(3) 3, 4

28 U.S.C. §2201 ..... 3, 6

28 U.S.C. §2202 3

42 U.S.C. §1983 ..... 3, 4

42 U.S.C. §1988 ..... 3, 4

New York State Constitution and Statutes:

New York State Constitution, Art. III, §§1-5 ..... 3, 4, 5, 6

New York State Constitution, Art. XIX, §2 13

State Law, §§120-123 ..... 4, 5, 6

Miscellaneous:

Compendium on Legislative Apportionment, National Municipal League (2nd edition, April, 1962) 16

Cox, Address before the Tennessee Bar Assoc., 48 A.B.A.J. 711 10

Dauer and Kelsay, *Unrepresentative States*, National Municipal Review, December, 1955 16

PAGE

David and Eisenberg, *Devaluation of the Urban and Suburban Vote*, Bureau of Public Administration of the University of Virginia, Charlotte, Virginia (1961) 16

Lewis, *One Man—One Vote*, The Twentieth Century Fund, Sept. 1962 ..... 11, 19, 22

McKay, *Reapportionment and the Federal Analogy*, National Municipal League, Aug. 1962 22

New York State Constitutional Convention Committee Report (1938) 14

Silva, *Apportionment in New York*, 30 Ford L. Rev. 581 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No.

WMCA, INC., ET AL.,

Appellants,

v.

CAROLINE K. SIMON, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

Opinon Below

The opinion of the three-judge district court dismissing the complaint has not been reported. A copy thereof is set forth in Appendix A, *infra*, pp. 1-28. The prior opinion of that court, also dismissing the complaint, is reported at 202 F. Supp. 741. The prior opinion of this Court vacating that judgment of dismissal and remanding the case for reconsideration in the light of *Baker* v. *Carr*, 369 U. S. 186, is reported at 370 U. S. 190.

Jurisdiction

On August 27, 1962, the three-judge district court entered an order and judgment dismissing the complaint which had sought to enjoin various state officials from performing functions in connection with state constitutional and statutory provisions alleged to be in violation of the Fourteenth Amendment to the Constitution of the United States. A notice of appeal to this Court was filed in the district court on August 29, 1962 (R. 653-659). Jurisdiction of this Court to review on direct appeal the decision dismissing the complaint is conferred by 28 U.S.C. 1253.

Questions Presented

The legislative apportionment of New York State is based upon a formula contained in the state constitution. Application of that formula results, and must necessarily result, in gross disproportions between population and representation in both houses of the legislature. Appellants established that the Assemblyman from the most populous Assembly district represents fifteen times as many citizens as the Assemblyman from the least populous Assembly district and that the Senator from the most populous Senate district represents approximately twice as many citizens as the Senator from the least populous Senate district. Appellants offered to prove that the apportionment formula was adopted in 1894 intentionally to limit the representation of urban residents on the grounds, among others, that such residents were believed to be morally and intellectually inferior. Appellants further offered to prove that as a result of the aforesaid mal-

apportionment, appellants and others similarly situated are victims of economic discrimination and suffer other deprivations of due process of the law.

The questions presented are:

1. Whether the district court erred in dismissing the complaint on the ground that appellants had failed to prove that the apportionment is invidiously discriminatory in violation of the Fourteenth Amendment.

2. Whether the district court erred in excluding all evidence offered to prove:

(a) that the apportionment formula was intended to discriminate against urban residents because they were believed to be unworthy of an equal voice in the state government, where the complaint alleged that the apportionment results from affirmative legislative action violative of the Fourteenth Amendment.

(b) that appellants were denied due process of law because the malapportioned legislature unfairly discriminates against the under-represented urban residents.

(c) that a consensus of expert opinion supports the view that an apportionment pursuant to which both houses of the legislature are grossly disproportionate to population is unfair and discriminatory.

United States Constitution, Federal Statutes and State Constitution and Statutes Involved

The pertinent provisions of the United States Constitution; 42 U.S.C., Sections 1983 and 1988; 28 U.S.C., Sections 1343(3); 2201 and 2202; Art. III, Sections 1-5 of

the Constitution of the State of New York; and State Law, Sections 120-123, are set forth in Appendix B, *infra*, pp. 1b-58b.

Statement

a) The Complaint

This action was brought under the Civil Rights Act, U.S.C., Title 42, §§1983 and 1988, and under U.S.C., Title 28, §1343. The individual appellants are citizens and voters residing in the counties of New York, Bronx, Kings, Queens, Suffolk and Nassau. The appellant WMCA, Inc. is a New York corporation and a taxpayer having its principal place of business in New York County. The suit is a class action brought on behalf of the named appellants and all other persons, citizens, taxpayers and voters similarly situated.

The appellees are: the Secretary of State and Attorney General of the State of New York; the Commissioners of the Board of Elections of the City of New York; and the Chairman of the Board of Supervisors of Nassau, Westchester and Suffolk Counties and the President of the City Council of the City of New York.[1] The complaint alleged that all of the appellees perform or will be required to perform official functions arising out of the legislative apportionment of the state and the conduct of elections pursuant to such apportionment.

The complaint alleged that the appellants are denied due process and equal protection of the law as guaranteed to them by the Fourteenth Amendment of the Constitution

1. Although nominally appellees, the officials representing the City of New York and Nassau County filed answers (R. 41-42; 316-319) admitting the allegations of the complaint and associated themselves with the appellants in this action.

of the United States, by virtue of the provisions of the New York State Constitution and the statutes in implementation thereof which provide for an apportionment of the State Senate and Assembly[2] in a manner which is invidiously discriminatory to the residents of the more populous areas of the State.

The complaint contained two causes of action, the first of which alleged (R. 2-14) that the formula contained in the state constitution (Art. III, §§2-5) currently results in an apportionment which deprives appellants of rights guaranteed by the Fourteenth Amendment. The second cause of action (R. 14-15) alleged that those provisions of the state constitution were invalid and violative of the Fourteenth Amendment at the time of their adoption and that their adoption and the enactment in 1953 of statutes (State Law, §§121 and 123) apportioning the legislature pursuant to said provisions constituted "affirmative legislative action" which deprived appellants of rights guaranteed by the Fourteenth Amendment.

As examples of the results of the apportionment formula, the complaint cited (R. 10) the fact that "whereas one Senator represents approximately 299,000 citizens in New York County * * * one Senator represents substantially fewer citizens, in some instances almost as few as half as many citizens in upstate counties. * * * One Assemblyman represents 17,461 citizens of Yates County; one Assemblyman represents approximately 115,000 citizens in Bronx County."

---

2. Challenge was directed only to the apportionment of the state legislature and not to questions relating to Congressional districting. Matters concerning apportionment of state legislatures and those concerning Congressional districting are interrelated only in that the Congressional districts are determined by the state legislatures which, by virtue of malapportionment, may not be truly representative of their states.

The relief sought by the complaint was that the district court declare, pursuant to U.S.C., Title 28, §2201, that Article III, §§2-5, of the Constitution of the State of New York, and State Law, §§121 and 123, are void and invalid as being contrary to the Fourteenth Amendment of the Constitution of the United States; that the appellees be restrained from acting pursuant to said provisions, and that the court retain jurisdiction of the case until the state legislature provides for such apportionment of the state as would insure to the appellants the rights guaranteed them by the Fourteenth Amendment.

b) The Proceedings Below

On August 1, 1962, (following this Court's vacating the prior judgment of dismissal (370 U. S. 190)), the district court held a hearing at which, at the outset, it rejected appellants' offers to prove that: a) the apportionment formula was specifically designed and intended to curtail the representation of urban residents (R. 348, 379, 369, 573-619); b) that the malapportioned legislature in fact discriminated against urban residents in allocating tax revenues and distributing benefits (R. 345-352, 364, 372-375, 544-572); c) that a consensus of expert opinion deemed relationship to population to be the only fair and equitable basis to measure the validity of an apportionment system (R. 340, 377). Under these exclusionary rulings of the court, appellants were permitted only to introduce, and did introduce, evidence of the existing apportionment and the apportionment which must necessarily result when the mandatory formula contained in the state constitution is applied to 1960 citizen census figures. The appellees called no witnesses and offered no evidence (some facts were stipulated, R. 404, 520-536) to justify or

rationalize the gross disparities which exist in both the Senate and Assembly between population and representation.

c) The Opinions Below

Writing the principal opinion for the court, Richard H. Levet, District Judge, noted that "* * * we are unable to premise an invalidity of the provisions of the State of New York upon the *Baker* v. *Carr* determination by reason of the absence of applicable indicia" (App. A, *infra*, p. 7). Judge Levet wrote that tests for invidious discrimination have been held to include such matters as rationality of state policy, historical basis, presence or absence of a political remedy, geography "including accessibility of legislative representatives to their electors" and whether the "court is called upon to invalidate solemnly enacted State Constitution and laws" (App. A, *infra*, p. 13). Examining the New York apportionment by these tests (discussed, *infra*, at pp. 9-21), Judge Levet concluded that "plaintiffs have not shown by a fair preponderance of the relevant evidence that 'invidious discrimination' exists" (App. A. *infra*, p. 24). In a separate concurring opinion, Chief District Judge Sylvester J. Ryan held that it was permissible for a state to base an apportionment on criteria besides population. Judge Ryan wrote:

> "If apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York. Even if the urban representatives were to sincerely endeavor to care for the interests of the state as a whole, it is unlikely that they might be able to fully understand the problems of the remaining vast areas of the state" (App. A, *infra*, p. 27).

Judge Ryan did not discuss the converse problem, *i.e.*, the inability of the politically dominant rural minority to fully understand the problems of the urban majority, nor did he discuss appellants' rejected offer (R. 348, 544-562) to prove that in fact the malapportioned legislature discriminates against urban residents. Judge Ryan also found that a political remedy exists because, under the state constitution, a vote is held every twenty years on the question whether there shall be a constitutional convention. In 1957, a majority voted "No" to this question (App. A, *infra*, p. 27). (The question will next be presented to the voters in 1977.)

Circuit Judge Sterry R. Waterman noted his concurrence with the findings of fact and conclusions of law contained in the opinion of Judge Levet (App. A, *infra*, p. 28).

The Questions Presented are Substantial

The questions presented are substantial because they raise basic issues as to the scope and import of this Court's decision in *Baker* v. *Carr*. In that case, this Court was presented with a situation in which the laws of the state did not purport to apportion on any basis other than population.[3] Here, the Court is presented with a situation in which a state has deliberately chosen to create two classes of voters—rural and urban residents—and to assure, by virtue of a complex and arbitrary apportionment formula embodied in the state constitution—the political dominance of the rural class in both houses of the legislature.

---

3. On remand, the District Court in Tennessee held the existing apportionment to be unconstitutional. *Baker* v. *Carr*, —— F. Supp. —— (MD Tenn.), decided June 22, 1962.

The court below, unable to discern in *Baker* v. *Carr* any "applicable indicia" (App. A, *infra*, p. 7) invalidating New York's apportionment, dismissed the complaint. Thus, this case squarely presents the question whether a state may adopt a policy pursuant to which population is not controlling in determining the apportionment of either house of the state legislature. The decision below is erroneous and is in conflict with *Toombs* v. *Fortson*, 205 F. Supp. 248 (N.D. Ga.), *Moss* v. *Burkhart*, —— F. Supp. —— (W.D. Okla.), decided June 19, 1962; and is also in conflict with decisions of the highest state courts in Maryland (*Maryland Committee for Fair Representation* v. *Tawes*, ——Md.——), Court of Appeals, April, 1962, and Michigan (*Scholle* v. *Hare*, 367 Mich. 176), and numerous other cases constituting what the Michigan court described as "the current surge of national authority which, almost daily, arrives from a steadily increasing number of the States" (367 Mich. at 181).

Unless this Court reviews and sets aside the holding below, the result will be that a state cannot discriminate against voters on the basis of geography or any other basis unless it really intends to do so. If, however, a state has such intent and manifests it in a constitutional provision, the resulting discriminatory apportionment will be immune from judicial challenge.

A. We discuss briefly each of the "tests" considered by the lower court:

1. The first test applied by the district court was "rationality and lack of arbitrariness" and the court's conclusion was that the system is not irrational because "all ingredients are present" (App. A, *infra*, p. 16). By this the district court apparently meant that popula-

tion was included as well as geography in apportioning the state. Appellants' position, however, is that population must be more than merely one element among many in determining an apportionment. With respect to at least one house of the legislature it must be the determining element. Thus, appellants adopted the position that one house of the legislature must be reasonably proportionate to population and that the other house need not be proportionate to population provided there is not too great a disparity from population. For an earlier statement of this view, see Address by Honorable Archibald Cox, Solicitor General of the United States, before the Tennessee Bar Association, June 8, 1962, reprinted in 48 A.B.A. J. 711 (Aug. 1962). See R. 468-469.

We respectfully submit that an apportionment which does not approximate these standards is unconstitutional and that *a fortiori* an apportionment, such as New York's in which both houses are substantially disparate to population, is unconstitutional.[4] The court below construed "invidious discrimination" to refer only to irrational behavior of the sort which reflects inconsistency or purposelessness. Thus, Judge Ryan said that "'[i]nvidious discrimination' is an irrational and inconstant action against a group of citizens" (App. A, *infra*, p. 26). Appellants submit, however, that the import of the Court's holding in *Baker* v. *Carr* that the equal protection clause protects against invidious geographical discrimination

4. In *Toombs* v. *Fortson*, the court wrote (205 F. Supp. at 257):

> "Granting the plaintiffs' petition for declaratory judgment, we determine and hold that so long as the Legislature of the state of Georgia does not have at least one house elected by the people of the State apportioned to population, it fails to meet constitutional requirements".

extends beyond the "crazy quilt"[5] situation presented in that case. Once the applicability of the equal protection clause to legislative apportionment is recognized, a showing that a substantial disparity exists between population and representation should cast upon the state the burden of justifying and rationalizing that disparity. *And* the reasons which the state gives to justify the apportionment must be reasons which are consonant with the Fourteenth Amendment.

We respectfully submit that any apportionment which gives greater weight to the votes cast by persons residing in a particular area of the state than that given to votes cast elsewhere embodies an implicit value judgment that some persons are entitled to a greater influence in government than is proportionate to their numbers. See Lewis, *One Man—One Vote*, The Twentieth Century Fund, Sept. 1962, pp. 3-8.[6] We further submit that such a policy is not permissible under the Fourteenth Amendment.

2. Applying its second test, the court below found support for the existing apportionment provisions because they were supposedly "of historic origin" and traced the history of the county system in America and the prior New York apportionment provisions. The court, however, in its historical summary ignored two factors. First, at no time in the history of the state has the disproportion between population and representation been as great as it

5. See concurring opinion of Mr. Justice Clark, 369 U. S. at 254.

6. Forty copies of this report of the consensus of scholars assembled to discuss problems of legislative apportionment have been lodged with the Clerk together with this Jurisdictional Statement.

is today. The earlier apportionments were made at a time when there was a more uniform population dispersal throughout the state. The undisputed evidence demonstrates (see Exs. I-VII, R. 537-543) that there has been a constant and accelerating trend in New York increasing the extent to which the apportionment is non-representative of population. Moreover, in New York the rule of at least one representative per county applies only to the Assembly; Senate districts frequently comprise several counties. Therefore, preservation of county units can hardly justify malapportionment of *both* houses of the legislature.

Second, the district court ignored another significant aspect of the history of the present New York apportionment provisions, *i.e.*, that they were intentionally designed to suppress the representation which would otherwise be accorded residents of New York City (see Silva, *Apportionment in New York*, 30 Ford. L. Rev., 581, 595 et seq.). As noted above, the court deemed irrelevant (R. 369) all material offered by appellants to show that the malapportionment of the state is not an accidental result of a reasonable formula innocently devised and of long standing, but rather is the intended and purposeful result of a device adopted by a temporary rural majority in control of the Constitutional Convention of 1894, which group approached its task with the premise, sometimes made explicit[7], that urban residents were inferior and unworthy of an equal voice in state government.

We respectfully submit that the historical analysis of the court below is distorted and incomplete and that a complete historical analysis would have led to an oppo-

---

7. See Appellants' prior Jurisdictional Statement, *WMCA v. Simon*, No. 836, Oct. Term, 1961, Appendix C.

site conclusion. Further, it can hardly be contended after *Brown* v. *Board of Education*, 347 U. S. 483, that a violation of constitutional rights becomes sanctified merely because of the passage of time during which corrective efforts have been to no avail. Cf. *Fairbank* v. *United States*, 181 U. S. 283.

The court below did not separately consider or discuss the issues raised by the second cause of action of the complaint (R. 14-15). This cause of action alleges that the discriminatory apportionment provisions were invalid and violative of the Fourteenth Amendment at the time of their adoption and that their adoption and the enactment in 1953 of statutes in implementation thereof constituted "affirmative legislative action" which deprived appellants of rights guaranteed by the Fourteenth Amendment. For a further discussion of this point and the relevance thereto of *Gomillion* v. *Lightfoot*, 364 U. S. 339, see J. St., No. 836, Oct. Term, 1961, pp. 11-12.

3. Applying the third test, "availability of political remedy", the district court noted the provisions in the State Constitution, Article XIX, Section 2, providing for a constitutional convention and the negative vote cast on this question in 1957. (Judge Levet had previously relied upon this contention in the prior dismissal of this suit where these provisions were deemed by him to indicate a want of equity and a want of justiciability. 202 F. Supp. 741, 749, 753.)

We discussed in our prior Jurisdictional Statement (No. 836, Oct. Term, 1961, pp. 8-10) the reasons why, in fact, residents of New York have no adequate political remedy. Apart from the fact that the question of a Constitutional Convention will not again be submitted to the voters until 1977, the delegates to be sent to such a convention would

with rare exception, be elected by Senate districts and would, therefore, reflect the present inequitable apportionment of the state.[8] Prior proposals to revise the apportionment provisions of the constitution called for the substitution of even more discriminatory provisions and the rejection of such proposals by the voters merely indicated that a majority did not wish to see the situation worsened. These past negative votes in no way demonstrate that an adequate political opportunity for affirmative action exists in this state.

New York's constitution contains no provision for direct amendment by initiative and referendum and recurrent efforts to procure such a provision have all been in vain. (See, *e.g.*, New York State Constitutional Convention Committee Report (1938), Vol. II, pp. 1224-8, Vol. VII, pp. 377 *et seq.* For more recent efforts towards this end, see Sen. Intro. 656; Sen. Intro. 146; Assembly Intro. 92; Assembly Intro. 1170 (all of which were introduced at the 1961 session of the state legislature and died in committee).

The district court's finding that an adequate political remedy exists is, therefore, in conflict with *Moss* v. *Burkhart*, ___ F. Supp. ___, (W.D. Okla.), decided June 19, 1962 (which granted relief despite the pendency of an initiative petition to amend the apportionment provisions), and *Scholle* v. *Hare*, 367 Mich. 176 (where the state constitution provides for initiative and referendum and the challenged apportionment provisions were enacted by this means). If in a state which has initiative and referendum there is no bar to judicial relief, surely no such bar exists under the circumstances present in New York.

---

8. Each senatorial district elects 3 delegates; 15 delegates are elected at large. N. Y. Const. Art. XIX, §2.

Finally, of course, if the apportionment formula violates the Fourteenth Amendment the fact that, at various times in the state's history, a majority of the voters approved or did not act to alter such provisions does not render them invulnerable to federal challenge. A majority of voters in one state cannot act to supersede the federal constitution.

4. The court below concluded that the New York apportionment did not disclose geographical discrimination —the fourth test. This conclusion was based, in part, on a comparison of counties grouped in a manner which has no significance under the state constitution.[9] The court also judicially noted (App. A, *infra*, p. 4, par. 5) figures which compare New York City's 1960 population with its representation based upon the 1950 census, rather than the reduced representation which will result and control for the next ten years when the challenged reapportionment formula is applied to the 1960 census figures. In other words, because the legislature has not yet reapportioned on the basis of the current census, as under the state constitution it must do, and because the population of New York City relative to that of the entire state has declined, a temporary situation exists pursuant to which the discrepancies between the city's population and representation are considerably less than they will be for the ensuing ten years following reapportionment.[10]

---

9. The district court relied upon figures for ten counties. Under the state constitution, the full ratio rule of which appellants particularly complain (Complaint, ¶13, R. 8-9) applies only to six counties (R. 418-429). A comparison based on those six counties discloses that the extent of actual malapportionment is much greater than the court's opinion would indicate (See Exs. I-VII, R. 537-543).

10. For a further discussion of this point and analysis of the figures based upon a valid comparison, see Brief of Abe Stark, et al. *WMCA v. Simon*, No. 836, Oct. Term, 1961, pp. 4-5.

The fact of the matter is that, measured by standards which are generally recognized by political scientists for these purposes,[11] New York's apportionment reflects severe geographical discrimination—in many instances more severe than in other states where apportionments have been successfully challenged in the courts since *Baker* v. *Carr*. We analyze the New York apportionment by these criteria:

(a) PERCENTAGE OF POPULATION WHOSE REPRESENTATIVES CONSTITUTE A MAJORITY (calculated by adding the populations of the districts, starting with the least populous, until the number of districts added represents a majority).[12]

When, in 1953, New York was reapportioned on the basis of the 1950 census, Assemblymen representing 37.1 percent of the citizens constituted a majority in the Assembly and Senators representing 40.9 percent of the citizens constituted a majority in the Senate.

At the present time, Assemblymen representing 34.7% of the citizens constitute a majority in the Assembly, and Senators representing 41.8% of the citizens constitute a majority in the Senate.

If reapportionment were carried out under the existing constitutional formula, Assemblymen representing 37.5%

11. The court below did not deem expert opinion relevant and did not discuss any of these standards. See p. 22, *infra*.

12. This criterion is discussed and figures for the various states are indicated in Dauer and Kelsay "Unrepresentative States", National Municipal Review, December, 1955, pp. 571-575 and 587. Corrections appear in the National Municipal Review for April, 1956. See also David and Eisenberg, "Devaluation of the Urban and Suburban Vote", Bureau of Public Administration of the University of Virginia, Charlotte, Va. (1961). More current figures appear in the "Compendium on Legislative Apportionment" published by the National Municipal League (2nd edition, April, 1962).

of the citizens would constitute a majority in the Assembly, and Senators representing 38.1% of the citizens would constitute a majority in the Senate.

(b). EXTREMES (expressed as a ratio—the population of the most populous district divided by that of the least populous.)[13]

When, in 1953, the state was reapportioned on the basis of the 1950 census, the most populous Assembly district had 12.5 times as many inhabitants as the least populous Assembly district (the ratio in terms of citizen population was 11.9 to 1) and the most populous Senate district had 2.4 times as many inhabitants as the least populous Senate district (the ratio in terms of citizen population was 2.4 to 1).

At present, the most populous Assembly district has 17.8 times as many inhabitants as the least populous Assembly district. (The ratio in terms of citizen-population is 17.6 to 1.)

At present, the most populous Senate district has 4 times as many inhabitants as the least populous Senate district. (The ratio in terms of citizen-population is 3.9 to 1.)

If the Assembly were reapportioned under the existing constitutional formula, the most populous Assembly district would have at least 13 times as many inhabitants as the least populous Assembly district. (The ratio in terms of citizen-population would be at least 12.7 to 1.)

(It is not possible now to calculate precisely what the ratio of the population of the most populous Senate dis-

13. For comparative figures in other states, see "Compendium on Legislative Apportionment" (2nd edition) and the University of Virginia study. See footnote 12 *supra*.

trict would be to the population of the least populous Senate district if the Senate were reapportioned under the existing constitutional formula, but, because of various mandatory rules in that formula it is clear that malapportionment will continue unchecked in the Senate (R. 528)).

(c) Relative Voting Power of Various Categories of Counties (100% represents the average power of a vote for the entire state, and other figures indicate the variation from this average. Thus, voters, in an under-represented area might have a voting power of, say, 75%; those in an over-represented area might have a voting power of 200%. The figures used are averages for both houses.[14]

(i) *Under-Represented (heavily populated) Counties*

In 1950, the average voter in those New York counties with populations over 500,000 had a voting power which was 84% of the state average. In 1960, this percentage became 86%.

(ii) *Over-Represented (sparsely populated) Counties*

In 1950, the average voter in those New York counties with populations of 25,000 or less had a voting power which was 319% of the state average. In 1960, this percentage was 348%.

In only 5 of all the other 49 states are counties with populations under 25,000 more over-represented than in New York. (California, Arizona, Florida, Maryland and

14. The figures contained in this section appear in the University of Virginia study, *op. cit. supra* fn. 12, at p. 50. Comparable figures for the percentages which will result following reapportionment are not available.

New Jersey.) Thus, New York ranks as the sixth worst state in terms of rural over-representation.[15]

We respectfully submit that the court's failure to recognize the extent to which New York's apportionment is geographically discriminatory results solely from its failure to apply to that apportionment recognized criteria for measuring such data.

Apart from statistical considerations, Judge Levet noted (App. A, *infra*, p. 22):

> "Another factor worthy of consideration is the fact that the interests of the 'upstate' counties may be diverse while those of the city districts may be united. Ninety-seven percent of the State's area is outside the six counties in which the plaintiffs reside."

We submit that this observation of the court epitomizes the philosophy embodied in its opinion which equates acres with people and acquiesces in preferential treatment to persons solely on the basis of their place of residence.[16]

The court mentioned "accessibility" as a relevant consideration in determining whether an apportionment was invidiously discriminatory. By this is apparently meant the supposed difficulties of communication which confront

---

15. "All states except New Jersey and Rhode Island display increasing over-representation of rural counties since 1910. In most, the trend has been one of consistently increasing over-representation during the 50-year period. California, Maryland, *New York*, New Jersey, Pennsylvania, Massachusetts, Florida, Connecticut, and Arizona provide instances of the greatest over-representation following the 1950 census despite any reapportionments. In 1960, before reapportionment or redistricting, the most extreme instances of over-representation existed in California, Arizona, Florida, Maryland, New Jersey, *New York*, and Pennsylvania * * *" (Emphasis added). University of Virginia study, *op. cit. supra* fn. 12, at p. 14.

16. For an analysis and criticism of such thinking, see Lewis, *One Man—One Vote*, The Twentieth Century Fund, pp. 3-8.

a representative from a large geographical area. But an equally strong argument can be made that it is easier to communicate with the voters in a sparsely populated rural area where there is less competition for space in the local newspaper and on the local radio station and there are fewer other competitors for the time and attention of the constituents than are present in the congested urban areas. Moreover, the accessibility consideration is entirely anachronistic and, in today's world of rapid transportation and communication, furnishes meager support indeed for over-representing residents of sparsely populated areas in both houses of the legislature.[17]

5. In invoking, as the fifth test, the fact that the apportionment provisions in New York State were embodied in the state constitution, Judge Levet adhered to an opinion, first expressed in his prior dismissal of the complaint (202 F. Supp. at 753), that the problem facing a federal court was somehow qualitatively different because the apportionment provisions were contained in the state constitution. Appellants reassert the position urged in their prior Jurisdictional Statement (No. 836, Oct. Term 1961, p. 8) that:

> "• • • [f]rom the standpoint of the federal constitution, it is irrelevant whether the discrimination is primarily a result of designed legislative inaction contrary to the state constitution, as in *Baker*, or of affirmative action which takes the form of enactment of constitutional provisions and statutes implementing those provisions, as in this case. Cf. *Giles* v. *Harris*, 189 U. S. 475; *Pierce* v. *Society of Sisters*, 268 U. S. 510. See also, *Gibson* v. *Board of Public Instruction*, 170 F. Supp. 454, 456 (S. D. Fla.) (1958). Clearly, if a state acts in a manner which violates rights guaranteed by the Fourteenth

17. *Ibid.*

Amendment, it is no defense to assert that the state has violated such rights with the solemnity and majesty of a constitutional provision. *Cooper* v. *Aaron*, 358 U. S. 1, 18."

In this respect, the decision below is in conflict with *Scholle* v. *Hare*, *supra*, *Toombs* v. *Fortson*, *supra*, and the *Maryland Committee for Fair Representation* v. *Tawes*, *supra*,[18] all of which invalidated apportionment provisions contained in state constitutions.

B. The Rejected Proof.

As noted *supra*, p. 13, nowhere in the court's opinion is there a discussion of the questions raised by the second cause of action (based on affirmative discriminatory legislative action) nor of the allegations of the complaint predicated upon the Due Process Clause of the Fourteenth Amendment (See R. 364). (In *Baker* v. *Carr*, this Court specifically left open the question whether discriminatory legislation emanating from a malapportioned legislature can give rise to an action predicated on the due process clause. 369 U. S. 194-195, fn. 15.)

We respectfully submit that it was error for the district court to reject appellants' offer to prove that there was

18. The court below suggests that the Maryland case turns on "failure of legislature to comply with State Constitution and convene a constitutional convention as approved by voters". (App. A, *infra*, p. 12.) As to this point, the Maryland court wrote: "Prayer (4) asks a mere declaration that the General Assembly's failure to convene a constitutional convention, as the result of an election that occurred more than ten years ago, violates certain of the provisions of our constitution. It is no more, we think, than a request to answer an abstract question, which, if answered, would serve no useful purpose. Such action is not included among the purposes of declaratory relief under our statutes". This point is not otherwise discussed in the opinion and can hardly be deemed to be the basis of the Maryland court's decision invalidating the apportionment of one house of the legislature.

intentional discrimination (R. 369) and that, as a result of the malapportionment of the state, appellants suffer a deprivation of due process because in allocating tax revenues, in distributing state aid, and in other matters affecting the economic, social and political welfare of the residents of the state, unequal treatment is accorded to the residents of the urban and rural areas (R. 364, 544-562).

The district court also erred in excluding all opinion evidence (Appellees as well as appellants had intended to introduce opinion testimony (R. 436-437)). The fact is that, as appellants offered to prove (R. 340), a consensus of scholarly opinion supports the view that the only legitimate basis of representation in a state legislature is population. See, *e.g.*, Lewis, *One Man—One Vote*, *op. cit. supra*, p. 11, fn. 6; McKay, *Reapportionment and the Federal Analogy*, National Municipal League, August 1962, p. 2. The court's exclusion of opinion evidence is contrary to the practice of the district court in Oklahoma which examined and relied upon the opinion of an expert on the apportionment of that state. See appendix to opinion of the court in *Moss* v. *Burkhart*, *supra*. The district court unduly curtailed the scope of its inquiries and deprived appellants of a full opportunity to show all of the respects in which the New York apportionment is invidiously discriminatory and otherwise unconstitutional.

CONCLUSION

For the reasons stated above, it is submitted that the Court has jurisdiction and that this appeal should be heard.

Respectfully submitted,

LEONARD B. SAND,
Robinson, Silverman, Pearce & Aronsohn.

MAX GROSS,
Attorneys for Appellants.

September 1962.

OPINION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Civ. 1559

W.M.C.A., INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY,

Plaintiffs,

against

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MAILLEE, Commissioners, Board of Elections, New York City,

Defendants.

APPEARANCES:

ROBINSON, SILVERMAN, PEARCE & ARONSOHN and MAX GROSS, Attorneys for Plaintiffs, 230 Park Avenue, New York, N. Y.

Leonard B. Sand, of Counsel.

LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Attorney pro se and Attorney for Caroline K. Simon, Secretary of State of the State of New York, The Capitol, Albany, New York and 80 Centre Street, New York, N. Y.

Irving Galt, Assistant Solicitor General,

George C. Mantzoros, Sheldon Raab, Assistant Attorneys General, of Counsel.

LEO A. LARKIN, Corporation Counsel of the City of New York, Attorney for Defendant Paul R. Screvane, President of the City Council of the City of New York, and Defendants Denis J. Mahon, et al., Commissioners of the Board of Elections of the City of New York, Municipal Building, New York, N. Y.; Benjamin Offner, George Dwight, of Counsel.

GEORGE W. PERCY, JR., County Attorney for the County of Suffolk, New York, Attorney for Defendant William J. Leonard, Chairman, Board of Supervisors, Suffolk County, Suffolk County Center, Riverhead, New York; Stanley S. Corwin, Assistant County Attorney, of Counsel.

BERTRAM HARNETT, County Attorney for the County of Nassau, Attorney for Defendant Eugene H. Nickerson, Chairman, Board of Supervisors, Nassau County, Old County Courthouse, Mineola, New York; Douglas P. Hull, Senior Deputy County Attorney, of Counsel.

FRANCIS J. MORGAN, County Attorney of Westchester County, Attorney for Defendant Leonard Berman, Chairman Board of Supervisors, Westchester County, County Office Building, White Plains, New York; Irving Libenson, Assistant County Attorney, of Counsel.

Before: WATERMAN, Circuit Judge, RYAN and LEVET, District Judges.

LEVET, D. J.:

This is an action for a judgment declaring that the constitutional and statutory provisions of the State of New York governing the apportionment of Senate and Assembly districts are unconstitutional.

The previous history of the proceedings in this Court appears in *W.M.C.A., Inc.* v. *Simon*, D.C.S.D.N.Y. 1961,

196 F. Supp. 758, and the action here is the same as the case before this three-judge court in 202 F. Supp. 741 (1962). The original decision was a dismissal of the complaint.

Following the decision in *Baker* v. *Carr*, 1962, 369 U. S. 186, the Supreme Court, on June 11, 1962, vacated the judgment entered upon the opinion by us contained in 202 F. Supp. 741 and remanded the case "for further consideration in the light of *Baker v. Carr.*" 370 U. S. 190 at 191.

Accordingly, after due notice to the parties, a hearing was held by this Court on August 1, 1962 at which time the proofs offered by the parties (in so far as we believed to have been relevant) were submitted and extensive oral argument on the merits of the claim was heard and briefs of the parties submitted. Now after deliberation and reconsideration in the light of *Baker* v. *Carr, supra*, we find and conclude as follows:

Facts

1. The New York State constitutional and statutory provisions are set forth as exhibits in the complaint. (Constitution, Art. 3, Sections 2, 3, 4, 5. Statutes—State Law Sections 120-123.)

2. There is no failure by the legislature to comply with the State Constitution and only the so-called malapportionment of Senatorial and Assembly districts is here involved. (Minutes of Nov. 15, 1961, pp. 32-33.)

3. No purposeful discrimination against any race, religion, creed or sex or national origin is claimed by plaintiffs. (Minutes, August 1, 1962, pp. 31, 32.) The whole objection of plaintiffs is that there is not fair representation of urban areas. (Id. at p. 32.).

The plaintiffs' claim is that the Constitution of the State of New York is unconstitutional under the Federal Constitution. (Id. at pp. 127, 128.)

As to the City of New York, its counsel conceded that there was no allegation of discrimination "other than a discrimination arising from financial matters either in the collection of taxes or the distribution of taxes or funds collected by the State and distributed throughout the whole State to the various communities and cities." (Id. at p. 42.)

4. We take judicial notice of the following:

The revised Constitution of 1894 containing the present apportionment provisions was submitted to the voters on November 6, 1894 and was approved by a vote of 410,697 to 327,402; the legislative apportionment was approved by a vote of 404,335 to 350,625. See Legislative Manual, New York, 1961-1962, page 289. On November 7, 1916, on a vote to revise the Constitution and amend the same, the vote was 506,563 for and 658,269 against. Id at p. 292. On November 5, 1957, the vote for a convention to revise the Constitution and amend the same was 1,242,568 for and 1,368,083 against. Id at p. 309.

5. We also, on a similar basis, note:

New York City with a population of 7,781,984 or 46.0% of the state's population of 16,782,304, has 65 assemblymen or 43.3% of the total assembly, and 25 senators or 42.1% of the total number of senators, while the counties other than those in New York City, with 54.0% of the population, have 56.7% of the total assembly and 56.9% of the senate seats.

6. The courts of the State of New York have approved the present methods of apportionment. *Matter of Sherrill v. O'Brien*, 1907, 188 N. Y. 185, 81 N. E. 124; *Matter of*

Fay, 1943, 291 N. Y. 198, 52 N. E. 2d 97; See also *Matter of Dowling*, 1915, 212 N. Y. 44, 113 N. E. 545.

7. A summary of the provisions of the State Constitution and statutes relative to Senatorial apportionment is substantially as follows:

> "The Senate districts are created primarily on the basis of citizen population. A 'ratio' is determined by dividing the citizen population of the State by 50 (the number of Senators); Senate districts are then formed by combining or dividing counties so that each district contains approximately this number (the 'ratio') of citizens. The Constitution provides that each district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact a form as practicable. There are four further provisos: When any county is entitled to more than three Senators, the Senate is enlarged from its minimum size (50) by the number of those additional Senators; no county can have four or more Senators unless it has a full population ratio for each; no county shall have more than one third of all the Senators; and no two counties that are adjoining or separated by one public waterway shall have more than half of all the Senators. (The last two of these provisos are inoperative, since no counties are entitled to that number of Senators.)" (Opening Memorandum For Defendants Simon and Lefkowitz Before The Statutory Court On Remand From the Supreme Court of the United States, pp. 4-5.)

8. A summary of the provisions of the State Constitution and statutes relative to Assembly apportionment is substantially as follows:

> "The total number of Assemblymen is fixed at 150, with every county except Hamilton (which shares one

Assemblyman with Fulton County) entitled to one Assemblyman. Sixty-one seats are thus accounted for. The remaining 89 seats, however, are apportioned in this manner: The citizen population of the State is divided by the total number of Assemblymen, and the quotient thus achieved becomes the 'ratio.' Every county whose citizen population equals 1½ times the 'ratio' is entitled to a second Assemblyman. The rest of the seats are then apportioned among those counties with citizen populations greater than twice the 'ratio.' Seats apportioned on remainders are apportioned in order of highest remainders, with the proviso that no county shall have more Assemblymen than a county with a larger citizen population." (Opening Memorandum For Defendants Simon and Lefkowitz Before the Statutory Court On Remand From the Supreme Court of the United States, p. 4.)

While more than one Senate or Assembly district can be contained within the whole of a single county, and while a given Senate district may consist of more than one county, no county border line can be broken in the formation of either type of district.

9. Certain statistical data were submitted by the parties in a *Stipulation* filed on August 1, 1962 and, by order of the court made a part of the record; Plaintiffs' Exhibits 1 through 7 also contain statistical tables. A copy of Tables IV (Appendix A) and VIII (Appendix B) from the said stipulation are appended hereto. These projected statistics of an apportionment based on the 1960 census appear to state the basis of plaintiffs' claims.

10. In the appendices hereto we attach (a) a map of the present Assembly Apportionment, the original of which is contained between pp. 748-749 of the Legislative Manual of the State of New York for the year 1960 (Appendix C),

(b) a map of the present Senate Apportionment, the original of which is contained in the same publication between pp. 712-713 (Appendix D), (c) a Table of the Population of the State of New York, County Recapitulations, the original of which is contained on pp. 1,030 and 1,031 of the Legislative Manual of the State of New York for the year 1961-1962 (Appendix E). We take judicial notice of the facts therein contained.

Issues

The questions for determination by this Court are as follows:

First, do the undisputed facts constitute "invidious discrimination" against the plaintiffs and those similarly situated under the decision of the United States Supreme Court in *Baker* v. *Carr*, *supra*; *second*, assuming an affirmative answer to the first question, to what relief are plaintiffs entitled?

Baker v. Carr

We are unable to conclude that the *Baker* v. *Carr* decision, *supra*, has invalidated the particular type of apportionment provisions which are here attacked. We recognize the force of the *Baker* decision to the full extent indicated by the opinions of the Court. We acknowledge the validity of jurisdiction as we did before (202 F. Supp. 741). We accept the mandate of justiciability. We test the New York apportionment provisions by such standards as we are able to ascertain.

However, we are unable to premise an invalidity of the provisions of the State of New York upon the *Baker* v. *Carr* determination by reason of the absence of applicable indicia.

1. *Mr. Justice Douglas* concurring in *Baker* v. *Carr*, *supra*, stated:

> "The traditional test under the Equal Protection Clause has been whether a State has made 'an invidious discrimination,' as it does when it selects 'a particular race or nationality for oppressive treatment.' See *Skinner* v. *Oklahoma*, 316 U. S. 535, 541. Universal equality is not the test; there is room for weighting. As we stated in *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 489, 'The prohibition of the Equal Protection Clause goes no further than the invidious discrimination.'" (pp. 244-245.)

2. *Mr. Justice Clark* in his concurring opinion in *Baker* v. *Carr*, *supra*, wrote:

> "I take the law of the case from *MacDougall* v. *Green*, 335 U. S. 281 (1948), which involved an attack under the Equal Protection Clause upon an Illinois election statute. The Court decided that case on its merits without hindrance from the 'political question' doctrine. Although the statute under attack was upheld, it is clear that the Court based its decision upon the determination that the statute represented a rational state policy. It stated:
>
> > 'It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a *proper* diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' Id., at 284. (Emphasis supplied.)" (pp. 251-252.)

3. *Mr. Justice Stewart* in his concurring opinion in *Baker* v. *Carr, supra*, stated:

"The Court today decides three things and no more: '(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) . . . that the appellants have standing to challenge the Tennessee apportionment statutes.' *Ante*, pp. 197-198.

"The complaint in this case asserts that Tennessee's system of apportionment is utterly arbitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother HARLAN, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter.' *Post*, p. 332. The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.' *Post*, p. 334. And contrary to the suggestion of my Brother DOUGLAS, the Court most assuredly does not decide the question, 'may a State weight the vote of one county or one district more heavily than it weights the vote in another?' *Ante*, p. 244.

"In *MacDougall* v. *Green*, 335 U. S. 281, the Court held that the Equal Protection Clause does not 'deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.' 335 U. S., at 284. In case after

case arising under the Equal Protection Clause the Court has said what it said again only last Term—that 'the Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others.' *McGowan* v. *Maryland*, 366 U. S. 420, 425. In case after case arising under that Clause we have also said that 'the burden of establishing the unconstitutionality of a statute rests on him who assails it.' *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584.

"Today's decision does not turn its back on these settled precedents." (pp. 265-266.)

4. *Mr. Justice Harlan*, in his dissent to the remand in the case at bar (370 U. S. 190 at 191), stated that *Baker* v. *Carr* does not indicate "any guidelines" to be followed by lower courts in deciding cases such as the instant one.

Counsel for plaintiffs has conceded that "There is nothing in the explicit opinion of Baker against Carr which would indicate how ultimately the cases were to be resolved on the merits," although counsel contended that there was "much in Baker against Carr which is implicit." (Minutes, August 1, 1962, p. 107.) This Court is unable to discern this result for which plaintiffs here argue.

CONSTITUTIONALITY

The principle that there is a presumption in favor of the constitutionality of a statute and the principle that a violation must be clear before a federal court of equity will lend its power to the disruption of the state election processes (*Sanders* v. *Gray*, D.C.N.D. Ga. 1962, 203 F. Supp. 158, 170) have been re-enunciated in apportionment decisions rendered since the *Baker* v. *Carr* determination.

1. In *Caesar* v. *Williams*, Supreme Court of the State of Idaho, April 3, 1962, —— Idaho ——, 9 Idaho Capital Re-

port 161, McFadden, J., wrote:

"In considering the question of the constitutionality of these acts, certain fundamental rules at all times must be kept in mind. The burden of showing the unconstitutionality of a statute is upon the party asserting it. Eberle v. Nielsen, 78 Idaho 572, 306 P. 2d 1083; Rich v. Williams, 81 Idaho, 311, 341 P. 2d 432. This court is without power to invalidate or nullify a constitutional act of the legislature; if the legislature does not clearly violate the Constitution, this court must and will uphold it. Padgett v. Williams, 82 Idaho 114, 350 P. 2d 353. Every reasonable presumption must be indulged in favor of the constitutionality of a statute. Robinson v. Enking, 58 Idaho 24, 69 P. 2d 603; Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P. 2d 105." (9 Idaho Capital Report 161 at 164.)

2. In *Maryland Committee for Fair Representations* v. *Tawes*, Md. Cir. Ct., Anne Arundel County, May 24, 1962, —— Md. ——, Judge Duckett wrote in part:

"Every intendment must be resolved in favor of constitutionality and the burden of showing unconstitutionality is on the petitioners".

citing *McGowan* v. *Maryland*, 366 U. S. 420-426; *Johns Hopkins University* v. *Williams*, 199 Md. 382, 86 A. 289; *Morris* v. *Baltimore*, 172 Md. 667, 192 A. 531.

3. In *Toombs* v. *Fortson*, D.C.N.D. Ga., 1962, 205 F. Supp. 248, 256, the Statutory Court stated:

"* * * there is an additional factor of importance when the Federal Court is called upon to invalidate solemnly enacted State constitutions and laws. Bearing in mind the plain lesson laid down by the Supreme Court repeatedly that an *alleged violation of Constitutional rights by the State must be clear* before a Fed-

eral court of equity will lend its power to the disruption of the State's election processes, * * *." (Emphasis inserted.)

Other Decisions

Certain cases decided since *Baker* v. *Carr* involved substantial discrepancies between existing legislative apportionments and pre-existing state constitutional provisions. See *Caesar* v. *Williams*, Supreme Court of the State of Idaho, April 3, 1962, —— Idaho —— ——, 9 Idaho Capitol Report 161; *Harris* v. *Shanahan*, District Court of Shawnee County, Kansas, Second Division, May 31, 1962, —— Kansas ——; *Maryland Committee for Fair Representations* v. *Tawes*, State Court of Appeals, Maryland, April ——, 1962 —— Md. —— (Failure of legislature to comply with State Constitution and convene a Constitutional Convention as approved by voters); *Lein* v. *Sathre*, D.C.D.N.D., Southwestern Division, May 31, 1962, —— F. Supp. —— (Statutory Court); *Moss* v. *Burkhart*, D.C.W.D. Okla., June 19, 1962, —— F. Supp. —— (Statutory Court); *Start* v. *Lawrence*, Commonwealth Court of Pa., June 13, 1962, No. 2536 Equity Docket and No. 187 Commonwealth Docket 1962; *Baker* v. *Carr*, D.C.M.D. Tenn., Nashville Div., June 22, 1962, —— F. Supp. ——; *Mikell* v. *Rousseau*, Supreme Court, Chittenden County, Vermont, May Term, 1962, —— Vt. ——; *Sweeney* v. *Notte, Jr.*, Sup. Ct. of *Rhode Island*, C.Q. No. 643, ——, R. I. ——; *Sims* v. *Frink*, D.C.M.D. Ala., 1962, 205 F. Supp. 245 (Statutory Court).

Other cases post *Baker* v. *Carr* involved apportionment arrangements with great disparities, lack of any rational basis and wanting in other respects and thus were far different than those of the present case. Those cases have no applicability here. See *Toombs* v. *Fortson*, D.C.N.D., Ga., 1962, 205 F. Supp. 248 (Statutory Court); *Sanders* v. *Gray*, D.C.N.D., Ga., April 28, 1962, 203 F. Supp. 158 (Statutory Court); *Scholle* v. *Hare*, Sup. Ct. of Michigan,

June, 1962, —— Mich. ——; *Fortner* v. *Barnett*, Chancery Court of the First Judicial District of Hinds County, Miss., —— Miss. ——.

TESTS

Tests for "invidious discrimination" have been held to include the following:

(1) Rationality of State policy and whether or not the system is arbitrary.

(2) Whether or not the present complexion of the legislature has a historical basis.

(3) Whether there lies within the electorate of the State of New York any possible remedy (if gross inequalities exist).

(4) Geography, including accessibility of legislative representatives to their electors.

(5) Whether the Court is called upon to invalidate solemnly enacted State Constitutions and laws.

Toombs v. *Fortson*, D.C.N.D. Ga., 1962, 205 F. Supp. 245; *Sanders* v. *Gray*, D.C.N.D. Ga., 1962, 203 F. Supp. 158; *Maryland Committee for Fair Representation* v. *Tawes*; Md. Circuit Court, Anne Arundel County, Maryland, May 21, 1962, —— Md. ——, —— A. ——; *Baker* v. *Carr*, 1962, 369 U. S. 186, 258, 259.

1. *Rationality and Lack of Arbitrariness*

The provisions of the State Constitution (Art. 3, Sec. 5) in reference to *Assembly Districts* are basically as follows:

(a) Apportionment among the several counties of the state, "as nearly as may be according to the number of their respective inhabitants, excluding aliens."

(b) Every county except Hamilton is entitled to one member.

After establishing a quotient ratio for the whole state further provisions are as follows:

(c) Each county containing less than a ratio and one-half over receives one member.

(d) All other counties (i.e. those having more than a ratio and a half) receive a second member.

(e) The remaining members are apportioned to the counties having the highest remainders in the order thereof.

Nothing in these provisions is arbitrary unless the ingredient of geographical allowance of a minimum of one assemblyman per county is so considered. Certainly there is no classification which treats urban counties differently from other counties.

The net result is that assemblymen (subject to the minimum provision per county, like the minimum provision for members in the Federal House of Representatives) are in fact substantially based on citizen population.

The provisions of the State Constitution (Art. 3, Sections 2, 3, and 4) in reference to the Senate are basically as follows:

(a) Fifty senatorial districts are established (section 3).

(b) Such districts are, after census returns at specified intervals, to "be so readjusted or altered so that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and be in as compact form as practicable" (section 4). (Plaintiffs make no claim that the statutes do not reflect the state constitutional provisions.)

Certain other requirements augment or implement the foregoing provisions:

(c) No county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. (Certain limitations, not too pertinent here prohibit divisions of towns and cities;

however, it is noted that counties, towns, etc. which may be included in either of two districts, "shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens".)

(d) No county shall have four or more senators unless it shall have a full ratio for each senator.

(e) Other provisions which today have absolutely no factual application provide that (i) no county shall have more than one third of all the senators and (ii) no two adjoining counties, or counties which are separated only by public waters, shall have more than one-half of all the senators.

Apparently plaintiffs complain of the so called "full ratio rule" the gist of which is as follows:

I. "No county shall have four or more senators unless it shall have a full ratio for each senator." N. Y. Const. Art. II § 4.

II. ". . . except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent." N. Y. Const. Art. III § 4.

The provisions above mentioned do not appear arbitrary or irrational. Unless senatorial districts are to be subject to repeated and relatively frequent readjustments, some practicable means of addition of more senators must be provided.

As stated by Judge Chase in *Matter of Dowling*, 1916, 219 N. Y. 44, 51: "The exception is given for one, and only one purpose, and that is to prevent counties having three or more senators from obtaining a larger number of senators at the expense of the counties of the state not having three or more senators." These provisions are

designed to effectuate administration of the senatorial electorate, and designed to meet accessibility, and practicability. No proof was submitted by plaintiffs that the senatorial districts, aside from some variance in citizen population were otherwise subject to criticism.

The system is not irrational. It clearly gives weight to population within the state's counties which form a basis for the ingredient of area, accessibility and character of interest.

Such an arrangement is not arbitrary. It has factors adapted to the needs of the State of New York constituted as it is of urban, suburban and rural areas, with congestion of population in one spot, with areas of lesser intensity in other locations and with sparsely settled spaces more remote from the centers of population. All ingredients are present, there is no arbitrariness in formulae or in the result thereof.

2. *Historical Basis*

The present provisions for apportionment are of historic origin. In New York, the county is a classic unit of governmental organization and administration. New York has consistently emphasized county government and the county unitary approach.

Charles H. Beard states that in most cases the county units in this country "bear the imprint of precedents dating back to medieval England" (American Government and Politics, MacMillian Company, 1949, p. 787).

As explained by *Ferguson* and *McHenry:*

> "* * * When the American colonies were first settled, England was divided into shires, which in turn, were subdivided into parishes, hundreds, manors, and boroughs. When transplanted to the Colonies, the term 'shire" gave way to its synonym 'county'. The County which was first instituted in Virginia, later became

the primary unit of local government in the South, the middle states established both counties and townships. New England used counties and towns, but the former were relegated to a subordinate position." (The American System of Government, McGraw-Hill Book Company, Inc., New York, New York, 6th Ed., 1961, pp. 668, 669.)

See also Fairlie and Kneier, County Government and Administration, Century Co., New York, 1930, pages 1-38.

Professor *Cullen B. Gosnell* writes:

"* * * Local Government in the United States can be traced directly to England. The County grew out of the Shire. While the County was not in vogue in England until after the Norman Conquest, it had become well established before the colonization of America." (State and Local Government in the United States, New York, Prentice-Hall, Inc., 1951, p. 14.)

James Bryce wrote:

"In the middle States of the Union, Pennsylvania, New Jersey and New York, settled or conquered by Englishmen somewhat later than New England, the town and town-meeting did not as a rule exist, and the county was the original basis of organization." (American Commonwealth, MacMillan Company, 1926, Vol. 1, p. 599.)

Bryce also stated:

"The County is perhaps to be regarded at least in New York, Pennsylvania and Ohio, as the true unit, and the townships (for so they are usually called) as its subdivisions." (Ibidem, p. 600.)

Professor *Edward P. Cheyney*, of the University of Pennsylvania discussing "The English County and Its

Officers, (1600-1650)" stated: "The oldest, most stable and most important unit of local government was the shire, or county." (European Background of American History, 1300-1600, Harper and Brothers, 1904, p. 261.)

Paul W. Wager, in County Government Across the Nation, University of North Carolina Press, 1950, page 157, observed: "During the Colonial period there evolved in New York a system of local government which in its main features, has been perpetuated."*

CONSTITUTION OF 1777

All of this was recognized by the makers of the constitution of 1777, adopted during the progress of the Revolution in a state in which perhaps one third of the military operations of that war took place. This constitution (Section IV) provided for an assembly of seventy members *"to be annually chosen in the several counties"* (emphasis added), and certain numbers of members for each county were then specified. Section V which followed contained provisions for a census after the termination of the war and at seven year intervals thereafter and for adjustment of the representation of each county. No provision for *omission* of any county from some representation or for combining one county with another appear.

The same constitution (Sections X, XI, XII) provided for a senate of twenty-four freeholders elected for four years, and to be set up in classes so that one quarter were

* Each county is allotted one representative in the lower chamber of 23 states; to wit, Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah and Wyoming. (Harvey, Lashley G., Reapportionments of State Legislatures, 17 Law and Contemporary Problems, 364.) It may also be noted that seven of these states were among the original 13 states of this union. Certain states also assure one senator for each county, to wit, Connecticut, Idaho, Maine, Maryland, Montana, New Jersey, Oregon, South Carolina, Vermont and Wyoming. (Ibidem.)

reelected each year. The state was divided for the election of senators into "four great districts"; and the counties to be contained in each district specified as well as the number of senators for each of these "great" districts. After mentioning the state census to be taken, as for assembly purposes, the 1777 constitution provided for reapportionment, "as near as may be, to the number of freeholders in each district" and the addition of a senator to any district in which the number of electors had increased one twenty-fourth part of the whole number of electors, which by the said census, shall be found to be in this state.

Amendments to the Constitution of 1777

By delegates to a State convention in 1801 the number of the members of the assembly was increased to one hundred with a provision that the number should never exceed one hundred and fifty. The legislature was directed to apportion the "said one hundred members of the assembly *among the several counties of this state* (emhpasis inserted) as nearly as may be, according to the number of electors which shall be found to be in each county by the census directed to be taken in the present year." (New York State Constitution Annotated, New York State Constitutional Convention Committee 1938, Part II pp. 21, 22.)

At the same time the number of senators was fixed at thirty-two so that the entire number (32) are apportioned among the "four great districts" as "nearly as may be, according to the number of electors qualified to vote for senators which shall be found to be in each of the said districts" (Ibidem p. 22).

CONSTITUTION OF 1821

A constitutional convention of 1821 submitted a new constitution which was approved by the voters in 1822 and took effect December 31, 1822. This constitution (Ibidem p. 24) provided for a senate of 32 members and an as-

sembly of 128 members. Article 1, Section 5 divided the state into 8 senatorial districts, specified the counties in each and stated that each district should choose four senators. Section 6 provided for reapportionment every ten years so that each district shall contain, as nearly as may be, an equal number etc. Districts were to consist of contiguous territory, and no county was to be divided in the formation of a senate district.

Section 7 provided that the members of the assembly shall be chosen by counties as nearly as may be, according to the number of inhabitants excluding aliens etc. Every county was to be entitled to one member of the assembly and no new county was to be erected unless its population shall entitle it to a member.

Constitution of 1846

The Constitution of 1846 adopted on November 3, 1846 (Ibidem p. 44) abandoned the groupings known as "four great districts" and set up thirty-two separate senatorial districts in each of which one senator was to be elected, (Art. III, Section 3). Provisions as to equalization of numbers of inhabitants, contiguous territory, and prohibition of division of a county unless entitled to two or more senators appear (Section 4).

The members of the assembly were to be apportioned *among the several counties*, as nearly as may be, according to the number of inhabitants etc. but the same reservations for each county as before were continued (Section 5).

Constitution of 1894

No further changes were made in apportionment matters until the constitution of 1894 was passed and adopted by the voters as heretofore stated. The present provisions are substantially the same and are elsewhere discussed.

In concluding this discussion of historic origins, it is fair to state that the basic pattern of New York's apportionment provisions are historic in character, fitted to the nature of the governmental development of the Empire State.

3. *Availability of Political Remedy*

The vote in 1957 on the call for a constitutional convention was heralded as an issue of apportionment. Governor Harriman stated that the most urgent constitutional reform needed was "to elect one house of the legislature on the basis of population to give big cities fuller representation." New York Times, Sept. 7, 1957, p. 1, col. 8. See New York Times, Sept. 24, 1957, p. 29, col. 1, Oct. 29, 1957, p. 22, col. 5. According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the total State population.

The 10 most heavily populated counties had a population of 11,937,406, or 73.5% of the citizen population of the state. Thus, the majority chose not to convene a constitutional convention.

This tends to negate any compelling circumstances requiring the intervention of federal equity power.

Article XIX, Section 2, of the present constitution provides that "at the general election to be held in the year nineteen hundred fifty seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question 'Shall there be a convention to revise the constitution and amend the same?' shall be submitted to and decided by the electors of the State." In case a majority decides in favor of this question, delegates are to be elected and a convention held. Delegates are to be chosen as follows: each senatorial district elects 3 delegates; the electors of the state elect 15 delegates-at-large.

It may be noted that it would be entirely possible for the ten most populous counties mentioned in the next paragraph to control a constitutional convention.

4. *Geographical Discrimination*

The fact is that the ten most heavily populated counties in the State (Kings, Queens, New York, Bronx, Nassau, Erie, Westchester, Suffolk, Monroe and Onondaga) have, under the current apportionment, 38 senate seats, 65.5% of all the senate and 93 assembly seats, 62.0% of all assembly seats. When the legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 senate seats and 93 assembly seats, 64.9% and 61.3% respectively of the two Houses (Minutes, August 1, 1962, pp. 153, 154).

As already indicated geography, accessibility, a proper diffusion of political initiative as between a state's thinly populated counties and those having concentrated masses, have not been cast out as proper factors in apportionment methods.

The six counties in which plaintiffs reside contain 56.2% of the citizen population of the State, but these counties comprise only 3.1% of the area of the state. Bronx, Kings, New York and Queens are the smallest counties in the state. Nassau is the ninth smallest county.

Another factor worthy of consideration is the fact that the interests of the "upstate" counties may be diverse while those of the city districts may be united. Ninety-seven percent of the State's area is outside the six counties in which the plaintiffs reside.

The 40th Senatorial District includes St. Lawrence, Clinton and Franklin counties, an area totalling 5,511 square miles which is larger than the State of Connecticut. St. Lawrence County alone covers 2,767 square miles, which is an area larger than the State of Delaware.

Economic and social matters, extensive resources and their developments, roads, school systems, welfare and other matters emphasize the necessity of some geographic consideration in a state of the size and character of New York. It is arguable that if strict population standards were adopted certain undesirable results might follow such as an increase in the size of the legislature to such an extent that effective debate may be hampered or an increase in the size of districts to such an extent that contacts between the individual legislator and his constituents may become impracticable. The possibility of these results, however, is not determinative as to the issues raised in the case at bar.

5. *Invalidation of a State Constitutional Enactment*

Here the plaintiffs seeks to invalidate not a mere statute but a state constitutional provision duly propounded and adopted by a Constitutional Convention in 1894. Moreover, those provisions were solemnly ratified as shown above by the voters who since have declined on a number of occasions to vote for a change. This court is, of course, bound to give supremacy to the U. S. Constitution over a State Constitution, but unless the invalidity is clear and definite, we are reluctant to overthrow this choice of the electors of this state.

In this connection we may well heed the wise admonitions of distinguished members of the United States Supreme Court who have spoken as follows:

> "The traditions and habits of centuries were not intended to be overthrown when that amendment [the Fourteenth] was passed." Opinion of Mr. Justice Holmes in *Interstate Railway Co.* v. *Massachusetts*, 1907, 207 U. S. 79, 87.
>
> "The Constitution as a continuously operating Charter of Government does not demand the impossible or

the impractical." Opinion of Chief Justice Stone in *Hirabayashi* v. *United States*, 1943, 320 U. S. 81, 104.

". . . [T]he legislature acting within its sphere, is presumed to know the needs of the people of the State." Opinion of Chief Justice Hughes in *Townsend* v. *Yeomans*, 1937, 301 U. S. 441, 451.

Conclusions

We are of the opinion and hereby conclude that

(1) The plaintiffs have not shown by a fair preponderance of the relevant evidence that "invidious discrimination" exists.

(2) The apportionment provisions of the State of New York are rational, not arbitrary, are of substantially historical origin, contain no geographical discrimination, permit an electoral majority to alter or change the same and are not unconstitutional under the relevant decisions of the United States Supreme Court.

(3) The defendants who have opposed this action are entitled to a dismissal of the complaint on the merits as against plaintiffs and against such defendants as have attempted to sustain plaintiffs' claims.

(4) No costs should be allowed to or against any party hereto since this is a matter of public interest and concern.

The foregoing constitute our findings of fact and conclusions of law. Let judgment be entered pursuant to the opinion herein.

In view of this determination there is no necessity of passing on the standing of W.M.C.A., Inc., as a party plaintiff herein.

Dated: New York, N. Y., August 16, 1962.

Richard H. Levet,
U.S.D.J.

UNITED STATES DISTRICT COURT

Southern District of New York

61 Civ. 1559

W.M.C.A., Inc., R. Peter Straus, Joseph De Maio, Edward Lind, S. Thomas Delaney, Edward C. Brown, James J. McCafferty,

Plaintiffs,

v.

Caroline K. Simon, Secretary of State of the State of New York, Louis J. Lefkowitz, Attorney General of the State of New York, Paul R. Screvane, President of the City Council of the City of New York, Eugene H. Nickerson, Chairman, Board of Supervisors, Nassau County, Leonard Berman, Chairman, Board of Supervisors, Westchester County, William J. Leonard, Chairman, Board of Supervisors, Suffolk County, Denis J. Mahon, James Power, John R. Crews, Thomas Mallee, Commissioners, Board of Elections, New York City,

Defendants.

Before: Waterman, Circuit Judge, Ryan and Levet, District Judges.

Ryan, D. J.:

This suit seeks to invoke the "equal protection" clause of the Fourteenth Amendent to the United States Constitution.

Plaintiffs allege that Article III (Sections 2-5) of the New York Constitution, which designates the method of geographic apportionment of Senators and Assemblymen to be elected to the State Legislature, is unconstitutional because it discriminates against the urban residents of the state and, therefore, conflicts with the "equal protection" clause.

We do not find that "invidious discrimination" exists or that it is impossible to change the State Constitution by a non-judicial means.

In the Supreme Court's remand of this case, the *per curiam* opinion stated:

> ". . . we held in *Baker* v. *Carr*, 369 U. S. 186, that a justiciable federal constitutional cause of action is stated by a claim of arbitrary impairment of votes by means of invidiously discriminatory geographic classification."

In the majority opinion of *Baker* v. *Carr*, Justice Brennan stated:

> ". . . it is open to the courts to determine . . . that a discrimination reflects no policy, but simply arbitrary and capricious action."

"Invidious discrimination" is an irrational and inconstant action against a group of citizens. We do not find that the New York State apportionment policy is irrational; all that plaintiffs have illustrated is that the apportionment is not based solely on population. But as was said in *MacDougall* v. *Green*, 335 U. S. 281, 283:

> "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government."

There are other criteria for determining apportionment besides population. In *Baker* v. *Carr*, Justice Harlan said:

> "Nothing in the federal constitution stops a state from choosing a legislative structure it thinks is best suited to the interests, temper, and customs of its people . . ."

Such factors as the interests of counties, geography, and concentration of political power, may also be considered. The six plaintiff counties contain 56.2% of the state's population, but they contain only 3.1% of its area. (P. 23, *Opening Memorandum for Defendants Before the Statu-*

tory Court On Remand from The Supreme Court of the United States.) If apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York. Even if the urban representatives were to sincerely endeavor to care for the interests of the state as a whole, it is unlikely that they might be able to fully understand the problems of the remaining vast area of the state. Each rural member of the Legislature presently represents a much greater area than his urban counterpart. If population were to be made the sole criterion of apportionment, the area per representative in certain districts would increase even further. Representatives might not adequately represent localities which were not their home and, correspondingly, the residents of these localities might lose the benefits of the democratic governmental process.

Besides this absence of "invidious discrimination", the New York State Constitution provides that the question: "Shall there be a convention to revise the Constitution and amend the same?" shall be put before the people every twentieth year. (Article XIX, Section 2.) In 1957, a majority voted "No" to this question even though a majority of those voting came from the urban areas. This seems to indicate that most of the voting citizens of New York are satisfied with the current system.

The situation in New York is different than in other states where the Court, in granting the relief requested, stated that one of the prime reasons was that there was no remedy within the electorate. *Toombs* v. *Fortson*, D. C., Georgia.

We concur in the findings of fact and conclusions of law reached by Judge Levet; we conclude that this Court has jurisdiction over the subject matter of the suit and this jurisdiction has been exercised and, after trial and examination of the statutes involved and of the undisputed facts, we conclude that the complaint herein should be dismissed upon its merits.

Dated: New York, N. Y., August 16th, 1962.

SYLVESTER J. RYAN

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

W.M.C.A., INC., et al.

against

SIMON, et al.

I concur, as does Chief Judge Ryan, in the findings of fact and conclusions of law contained in the Opinion of Judge Levet. I concur with my colleagues in ordering that the complaint herein be dismissed upon its merits.

STERRY R. WATERMAN,
United States Circuit Judge.

The following apportionment would result if the New York State Legislature reapportioned the Senate under the present constitutional formula, on the basis of 1960 Census statistics.

County	Citizen Population	Senators	Citizen population per Senator
Bronx	1,368,207	4	342,052
Erie	1,039,648	3	346,549
Kings	2,518,510	7	359,787
Nassau	1,275,801	3	425,267
New York	1,584,069	4	396,017
Queens	1,733,081	5	346,616
		On basis of second ratio	
Albany	269,088	1	269,088
Monroe	571,029	3	190,343
Niagara	235,677	1	235,677
Oneida	259,330	1	259,330
Onondaga	414,770	2	207,385
Suffolk	650,112	3	216,704
Westchester	782,179	3	260,726
All other counties	3,539,285	17	208,193
Entire State	16,240,786	57	284,926

The following apportionment would result if the New York State Legislature reapportioned the Assembly under the present constitutional formula, on the basis of the 1960 census statistics.

County	1960 Citizen Population in Each Assembly District
Schuyler	14,974
Yates	18,552
Schoharie	22,410
Lewis	23,064
Greene	30,931
Putnam	31,006
Seneca	31,235
Orleans	33,845
Wyoming	34,534
Essex	34,987
Tioga	37,610
Cortland	40,685
Chenango	42,979
Delaware	43,237
Warren	43,594
Livingston	43,690
Allegany	43,759
Franklin	43,915
Sullivan	44,434
Columbia	46,734
Washington	48,135
Otsego	51,588
Genesee	53,416
Madison	54,262
Fulton & Hamilton	55,067
Montgomery	56,287
Tompkins	64,227
Herkimer	65,218
Wayne	67,344
Ontario	67,410

VIII (con't)

County		1960 Citizen Population in Each Assembly District
Clinton		71,389
Cayuga		73,240
Cattaraugus		79,548
Oswego		85,356
Dutchess (2 districts)	Approx.	85,698
Jefferson		86,606
Saratoga		88,134
Orange (2 districts)	Approx.	89,937
Monroe (4 districts)	Approx.	95,172*
Steuben		97,176
Chemung		97,891
Onondaga (4 districts)	Approx.	103,693
Broome (2 districts)	Approx.	104,799
Nassau (4 districts)	Approx.	106,317*
********NEW YORK STATE AVERAGE		108,272
Suffolk (4 districts)	Approx.	108,352*
Richmond (2 districts)	Approx.	108,382
St. Lawrence		109,082
Bronx (6 districts)	Approx.	114,017*
Erie (6 districts)	Approx.	115,516*
Queens (9 districts)	Approx.	115,539*
Ulster		116,818
Niagara (2 districts)	Approx.	117,839
Kings (15 districts)	Approx.	119,929*
Oneida (2 districts)	Approx.	129,665
Westchester (6 districts)	Approx.	130,363
Rockland		131,834
New York (12 districts)	Approx.	132,006
Albany (2 districts)	Approx.	134,544
Rensselaer		140,933
Nassau (6 districts)	Approx.	141,756*

VIII (con't)

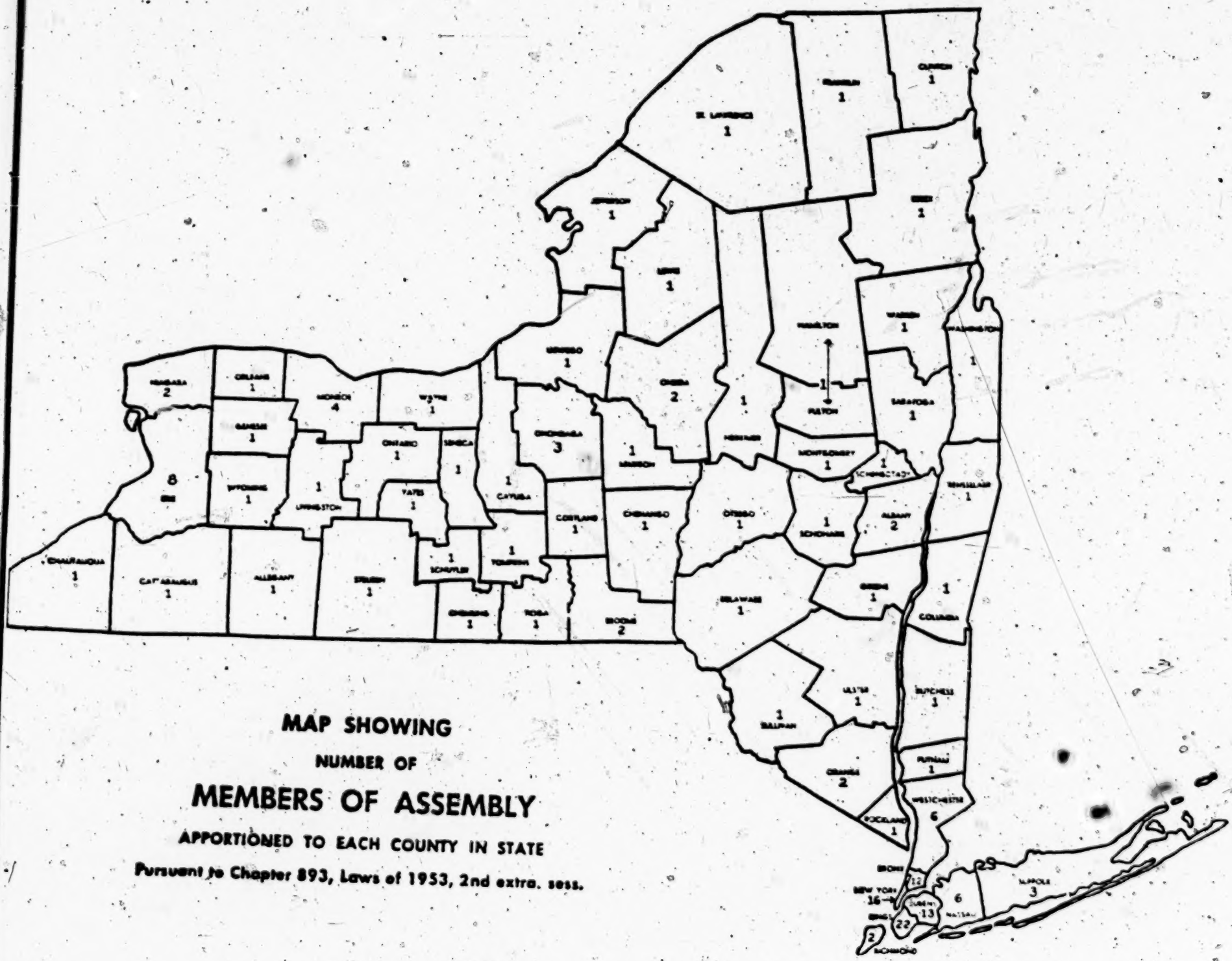
County		1960 Citizen Population in Each Assembly District
Chautauqua		143,832
Schenectady		150,688
Bronx (4 districts)	Approx.	171,026*
Erie (2 districts)	Approx.	173,275*
Queens (4 districts)	Approx.	173,308*
Kings (4 districts)	Approx.	179,894*
Monroe (1 district)	Approx.	190,343*
Suffolk (1 district)	Approx.	216,704*

* Assembly districts distributed among senatorial districts in conformity with the requirement: "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts in any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants." N.Y. Const., Art. III, § 5, Para. 4 (1894). The population in districts in the multi-member counties may vary due to the rule precluding the division of towns and blocks.

Appendix C to Opinion

Map Showing Members of Assembly Apportioned to Each County in New York State

(See Opposite) ☞



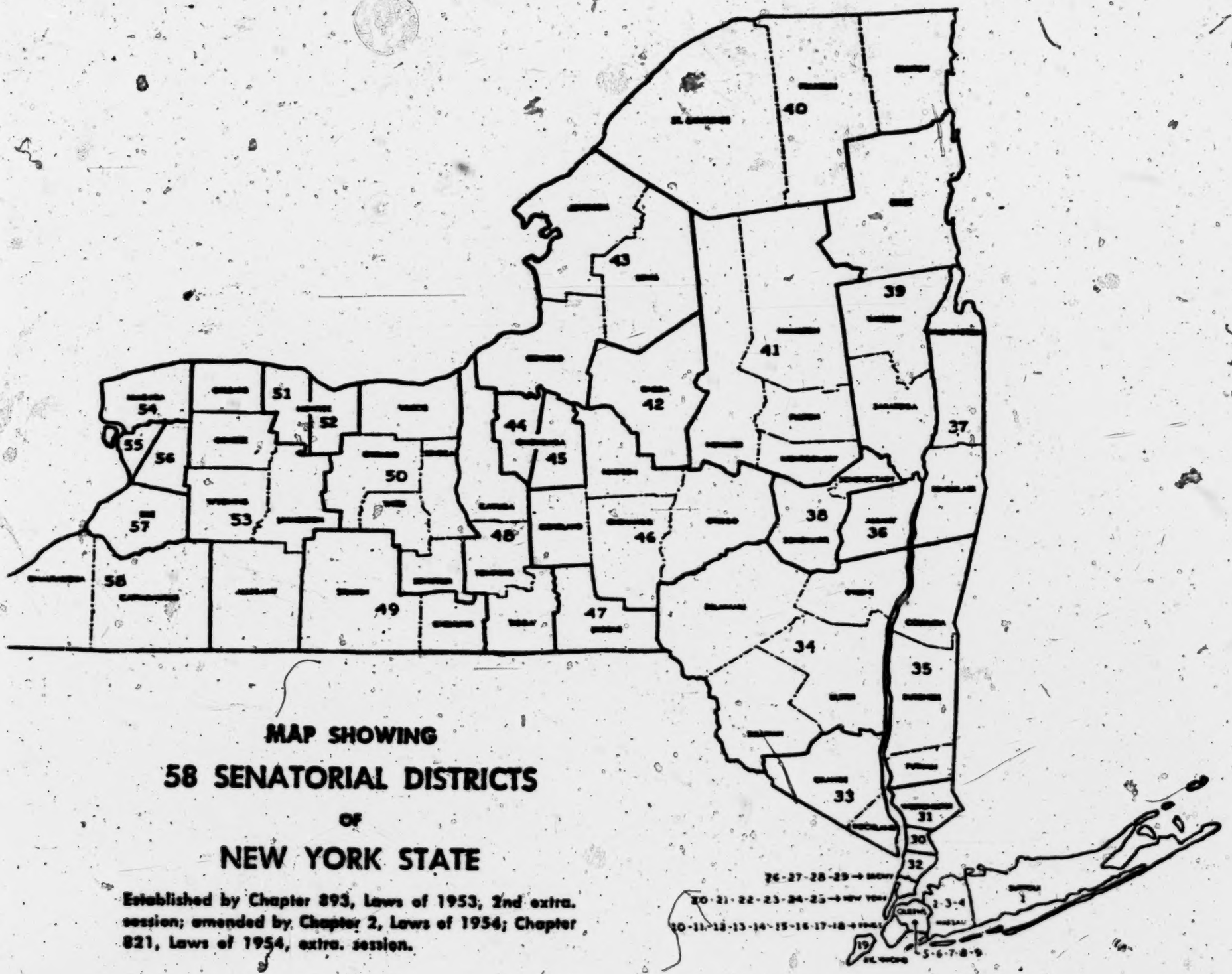
MAP SHOWING

NUMBER OF

MEMBERS OF ASSEMBLY

APPORTIONED TO EACH COUNTY IN STATE

Pursuant to Chapter 893, Laws of 1953, 2nd extra. sess.



MAP SHOWING

58 SENATORIAL DISTRICTS

OF

NEW YORK STATE

Established by Chapter 893, Laws of 1953, 2nd extra. session; amended by Chapter 2, Laws of 1954; Chapter 821, Laws of 1954, extra. session.

COUNTY RECAPITULATION

COUNTIES	Population						
	1915	1920	1925	1930	1940	1950	1960 final
Albany	183,330	186,106	197,138	211,953	221,315	239,386	272,926
Allegany	40,216	36,842	36,815	38,025	39,681	43,784	43,978
Bronx	615,600	732,016	872,168	1,265,258	1,394,711	1,451,277	1,424,815
Broome	90,641	113,610	135,040	147,022	165,749	184,698	212,661
Cattaraugus	72,756	71,323	73,778	72,398	72,652	77,901	80,187
Cayuga	66,751	65,221	65,344	64,751	65,508	70,136	73,942
Chautauqua	116,818	115,349	123,100	126,457	123,580	135,189	143,377
Chemung	59,017	65,872	72,292	74,680	73,718	86,827	98,706
Chenango	36,648	34,969	35,610	34,665	36,434	39,138	43,243
Clinton	47,561	43,898	46,145	46,687	54,006	53,622	72,722
Columbia	44,111	38,930	42,726	41,617	41,464	43,182	47,322
Cortland	30,074	29,625	31,051	31,709	33,668	37,158	41,113
Delaware	45,995	42,774	43,452	41,153	40,989	44,420	43,540
Dutchess	91,044	91,747	99,028	105,462	120,542	136,781	176,008
Erie	571,897	634,688	693,616	762,408	798,377	899,238	1,064,688
Essex	32,461	31,871	32,042	33,939	34,178	35,086	35,300
Franklin	46,181	43,541	45,915	45,694	44,298	44,830	44,742
Fulton	45,623	44,927	46,028	46,560	48,397	51,021	51,304
Genesee	40,707	37,976	43,420	44,468	44,481	47,584	53,994
Greene	30,091	25,796	28,207	25,808	27,926	28,745	31,372
Hamilton	4,491	3,970	4,242	3,929	4,188	4,105	4,267
Herkimer	64,109	64,962	66,705	64,006	59,527	61,467	66,370
Jefferson	81,009	82,250	85,776	83,574	84,003	85,521	87,835
Kings	1,796,513	2,018,356	2,203,991	2,560,401	2,698,285	2,738,175	2,627,319
Lewis	25,947	23,704	24,717	23,447	22,815	22,521	23,249
Livingston	38,427	36,830	39,264	37,560	38,510	40,257	44,053
Madison	41,742	39,535	40,907	39,790	39,398	46,214	54,635
Monroe	319,310	352,034	392,174	423,881	438,230	487,632	586,387
Montgomery	61,030	57,928	61,385	60,076	59,142	59,594	57,240
Nassau	116,825	126,120	207,640	303,053	406,748	672,765	1,300,171
New York	2,137,747	2,284,103	1,945,029	1,867,312	1,889,924	1,960,101	1,698,281
Niagara	108,550	118,705	133,437	149,329	160,110	189,992	242,269
Oneida	167,331	182,833	196,486	198,763	203,636	222,855	264,401
Onondaga	213,992	241,465	267,099	291,606	295,108	341,719	423,028
Ontario	54,628	52,652	55,240	54,276	55,307	60,172	68,070
Orange	113,118	119,844	125,629	130,383	140,113	152,255	183,734
Orleans	33,919	28,619	30,692	28,795	27,760	29,532	34,159
Oswego	75,929	71,045	71,404	69,645	71,275	77,181	86,118
Otsego	48,534	46,200	47,404	46,710	46,082	50,763	51,942
Putnam	12,767	10,902	12,500	13,744	16,555	20,307	31,722
Queens	396,727	469,042	713,891	1,079,129	1,297,634	1,550,849	1,809,578
Rensselaer	121,330	113,129	118,429	119,781	121,834	132,607	142,585
Richmond	98,634	116,531	138,277	158,346	174,441	191,555	221,991
Rockland	46,903	45,548	56,479	59,599	74,261	89,276	136,803
St. Law'ce	90,291	88,121	91,806	90,960	91,098	98,397	111,239
Saratoga	62,982	60,029	65,606	63,314	65,606	74,869	89,096
Schenectady	98,625	109,363	116,708	125,021	122,494	142,497	152,896

COUNTY RECAPITULATION — (Concluded)

COUNTIES	Population						
	1915	1920	1925	1930	1940	1950	1960 final
Schoharie	23,005	21,303	21,565	19,667	20,812	22,703	22,616
Schuyler	13,954	13,098	13,456	12,909	12,979	14,182	15,044
Seneca	25,249	24,735	25,363	24,983	25,732	29,253	31,984
Steuben	83,630	80,627	82,175	82,671	84,927	91,439	97,691
Suffolk	104,342	110,246	143,208	161,055	197,355	276,129	666,784
Sullivan	38,189	33,163	40,192	35,272	37,901	40,731	45,272
Tioga	25,549	24,212	26,111	25,480	27,072	30,166	37,802
Tompkins	36,535	35,285	39,559	41,490	42,340	59,122	66,164
Ulster	85,367	74,979	83,052	80,155	87,017	92,621	118,804
Warren	32,977	31,673	34,070	34,174	36,033	39,205	44,002
Washington	46,955	44,888	46,661	46,482	46,726	47,144	48,476
Wayne	53,476	48,827	51,785	49,995	52,747	57,323	67,989
W'chester	321,713	344,436	425,798	520,947	573,558	625,816	808,891
Wyoming	33,028	30,314	30,827	28,764	31,394	32,822	34,793
Yates	18,841	16,641	17,668	16,848	16,381	17,615	18,614
Totals	9,687,744	10,385,227	11,162,151	12,588,066	13,479,142	14,830,192	16,782,304

APPENDIX B

UNITED STATES CONSTITUTION, FEDERAL STATUTES AND STATE CONSTITUTION AND STATUTES INVOLVED.

UNITED STATES CONSTITUTION; Amendment XIV, § 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. • • •

FEDERAL STATUTES:

U. S. C., Title 42, Sections 1983 and 1988:

§ 1983 Civil Action for deprivation of rights—

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1988 The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and title 18 for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity

with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are different in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty.

U. S. C., Title 28, Section 1343, § (3):

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person. • • • To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any rights, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

The Federal Declaratory Judgment Act. U. S. C., Title 28, Sections 2201 and 2202:

§ 2201. Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States and the District Court for the Territory of Alaska, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not

further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief.

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

THE CONSTITUTION OF THE STATE OF NEW YORK

ARTICLE III — LEGISLATURE

§ 1. The legislative power of this State shall be vested in the Senate and Assembly.

§ 2. The senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred and fifty members. The assemblymen elected in the year one thousand nine hundred and thirty-eight, and their successors, shall be chosen for two years. Amended by the people Nov. 2, 1937.

§ 3. The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan

Island, to the place of beginning, and also Governor's, Bedloe's and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts num-

bers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington Avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place, and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson

river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street,

Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's island and Ward's island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue, and the Harlem river, to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Renesselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth,

seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogeden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the City of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the City of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

§ 4. Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be con-

trolling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if,

in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts more nearly equal in number of inhabitants excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall

have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators, for full terms beginning at such expirations, and for the formation of assembly districts.

§ 5. The members of the assembly shall be chosen by single districts and shall be apportioned by the legislature at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall

always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire

county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, except a town having more than

a ratio of apportionment and one-half over, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

STATE STATUTES: STATE LAW, SECTIONS 120-123

§ 120. Present senate districts

The senate districts of this state, as existing immediately before the enactment of this article, shall continue to be the senate districts of the state until the expiration of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations and for the formation of assembly districts. Added L.1953, c. 893, eff. Nov. 19, 1953.

§ 121. New senate districts

Except as provided in section one hundred twenty, the senate districts of this state from and after the time this article takes effect, shall consist as follows:

First. The first senate district shall consist of the county of Suffolk.

Second. The second senate district shall consist of that part of the county of Nassau within and bounded by a line beginning at a point where the dividing line between the town of Hempstead and the town of North Hempstead is intersected by Clinton Road (Glen Cove Road) and the easterly boundary line of the incorporated village of Garden City, thence southerly along the boundary line of the incorporated village of Garden City to the dividing line between the incorporated village of Garden City and the incorporated village of Hempstead, thence in a westerly and southerly direction along said dividing line to the easterly boundary line of the incorporated village of Rockville Centre, thence southerly and westerly along said boundary line to the easterly boundary line of the incorporated village of East Rockaway, thence southerly along said boundary line to Station Plaza, to Atlantic avenue, to the intersection of Atlantic avenue, Nassau avenue and Bayside avenue, thence along Bayside avenue to Messick avenue, to Ebert avenue (Anchor street), to Yost Parkway, to Perkins avenue, to Messick avenue, to Oceanside Parkway (Weidner avenue), to Lawson Boulevard, thence along Lawson Boulevard and Lawson Boulevard extended to the waters of Simonson Channel and through the waters of Simonson Channel, Barnum Island Channel and Hog Island Creek to Reynolds Channel, thence westerly through the waters of Reynolds Channel

to the dividing line between the county of Nassau and the county of Queens, thence northerly along said dividing line to the intersection of said dividing line with the dividing line between the county of Queens, the town of Hempstead and the town of North Hempstead, thence easterly along the dividing line between the town of Hempstead and the town of North Hempstead to the place of beginning.

Third. The third senate district shall consist of that part of the county of Nassau which includes the town of North Hempstead, the town of Oyster Bay and the city of Glen Cove; also that portion of the town of Hempstead described as follows: beginning at a point where Bethpage Turnpike intersects the dividing line between the town of Oyster Bay and the town of Hempstead, thence in a westerly direction along Bethpage Turnpike to North Wantagh avenue, thence northerly to Boone street, to Farmedge Road, to the intersection of Farmedge Road and Henry street, thence along Henry street to Maple avenue (Edna avenue), to Jupiter Lane, to Farmedge Road, to Bloomingdale Road (Solar Lane), to Constable Lane, to Marksman Lane, to Barrister Road, to Welder Lane, to Coppersmith Road, to Coachman Lane, to Poet Lane, to the dividing line between the town of Hempstead and the town of Oyster Bay and thence easterly and southerly along said dividing line to the place of beginning.

Fourth. The fourth senate district shall consist of that part of the county of Nassau within and bounded by a line beginning at a point where the dividing line between the town of Hempstead and the town of North Hempstead is intersected by Clinton Road (Glen Cove Road) and the easterly boundary line of the incorporated village of Garden City, thence southerly along said boundary line of the

incorporated village of Garden City to the dividing line between the incorporated villages of Garden City and Hempstead, thence in a westerly and southerly direction along said dividing line to the easterly boundary line of the incorporated village of Rockville Centre, thence southerly and westerly along said boundary line to the easterly boundary line of the incorporated village of East Rockaway, thence southerly along said boundary line to Station Plaza, to Atlantic avenue, to the intersection of Atlantic avenue, Nassau avenue and Bayside avenue, thence along Bayside avenue to Messick avenue, to Ebert avenue (Anchor street), to Yost Parkway, to Perkins avenue, to Messick avenue, to Oceanside Parkway (Weidner avenue), to Lawson Boulevard, thence along Lawson Boulevard and Lawson Boulevard extended to the waters of Simonson Channel and through the waters of Simonson Channel, Barnum Island Channel and Hog Island Creek to Reynolds Channel, thence westerly through the waters of Reynolds Channel to the Atlantic Ocean, thence easterly through the waters of the Atlantic Ocean to the dividing line extended between the town of Oyster Bay and the town of Hempstead, thence northerly along said dividing line extended and said dividing line to Bethpage Turnpike, thence westerly along Bethpage Turnpike to North Wantagh avenue, thence northerly to Boone street, to Farmedge Road, to the intersection of Farmedge Road and Henry street, thence along Henry street to Maple avenue (Edna avenue), to Jupiter Lane, to Farmedge Road, to Bloomingdale Road (Solar Lane), to Constable Lane, to Marksman Lane, to Barrister Road, to Welder Lane, to Coppersmith Road, to Coachman Lane, to Poet Lane, to the dividing line between the town of Hempstead and the town of Oyster Bay, thence westerly and north-

erly along said dividing line to the intersection of the town lines of Oyster Bay, North Hempstead and Hempstead, thence westerly along the dividing line between the town of North Hempstead and the town of Hempstead to the place of beginning; including the city of Long Beach.

Fifth. The fifth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Utopia Parkway extended intersects the waters of the East River, thence southerly along Utopia Parkway extended and Utopia Parkway to the intersection of Utopia Parkway with One Hundred and Sixty-ninth street, thence along One Hundred and Sixty-ninth street to Thirty-second avenue, to One Hundred and Sixty-eighth street, to Crocheron avenue, thence westerly along Crocheron avenue to Northern Boulevard, to Parsons Boulevard, thence southerly along Parsons Boulevard to Forty-fifth avenue, to Kissena Boulevard, to Elder avenue, to One Hundred and Thirty-third street, to North Hempstead Turnpike, thence easterly to One Hundred and Forty-first street, to Fifty-eighth avenue, to Main street, to Fifty-eighth Road, to One Hundred and Forty-second street, to Fifty-ninth avenue, to One Hundred and Forty-eighth street, to Sixtieth avenue, to One Hundred and Fiftieth street, to Horace Harding Boulevard, to One Hundred and Sixty-fourth street, thence southerly along One Hundred and Sixty-fourth street to Hillside avenue, to One Hundred and Sixty-third street, to Jamaica avenue, thence easterly to Hollis avenue, to Farmers Boulevard, thence southerly to One Hundred and Twenty-second avenue, to Springfield Boulevard, to One Hundred and Twenty-first avenue, thence easterly along One Hundred and Twenty-first avenue and Francis Lewis Boulevard to the dividing line between the county of

Queens and the county of Nassau, thence northerly along said dividing line to the waters of Little Neck Bay, thence westerly through the waters of Little Neck Bay, Long Island Sound and the East River to the place of beginning.

Sixth. The sixth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Glenmore avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Glenmore avenue to Seventy-sixth street, to Liberty avenue, to One Hundred and Second Road, thence along One Hundred and Second Road to Eighty-fourth street, to One Hundred and Second avenue, to Eighty-sixth street, to One Hundred and First avenue, to Ninety-third street, to Ninety-seventh avenue, to One Hundredth street, to Ninety-fifth avenue, to One Hundred and Tenth street, to Ninety-fifth avenue, to Lefferts Boulevard, to Eighty-ninth avenue, to One Hundred and Thirtieth street, to Jamaica avenue, to One Hundred and Fiftieth street, to Hillside avenue, to One Hundred and Sixty-third street, to Jamaica avenue, to Hollis avenue, to Farmers Boulevard, thence southerly to One Hundred and Twenty-second avenue, to Springfield Boulevard, to One Hundred and Twenty-first avenue, thence easterly along One Hundred and Twenty-first avenue and Francis Lewis Boulevard to the dividing line between the county of Queens and the county of Nassau, thence southerly along said dividing line as it winds and turns to the waters of the Atlantic Ocean and westerly through the waters of the Atlantic Ocean to the dividing line between the county of Queens and the county of Kings, thence northerly along said dividing line as it winds and turns to the place of beginning.

Seventh. The seventh senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Glenmore avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Glenmore avenue to Seventy-sixth street, to Liberty avenue, to One Hundred and second Road, thence along One Hundred and Second Road to Eighty-fourth street, to One Hundred and Second avenue, to Eighty-sixth street, to One Hundred and First avenue, to Ninety-third street, to Ninety-seventh avenue, to One Hundredth street, to Ninety-fifth avenue, to One Hundred and Tenth street, to Ninety-fifth avenue, to Lefferts Boulevard, to Eighty-ninth avenue, to One Hundred and Thirtieth street, to Jamaica avenue, to One Hundred and Fiftieth street, to Hillside avenue, to One Hundred and Sixty-fourth street, thence northerly to Seventy-first avenue, thence westerly to Kissena Boulevard, to Seventieth Road, to One Hundred and Fifty-third street, to Jewel avenue, and thence westerly along Jewel Avenue to Sixty-ninth Road, to Grand Central Parkway, to Jewel avenue, to One Hundred and Eighth street, to Sixty-seventh avenue, thence along Sixty-seventh avenue (Roxton street) to Thornton Place, to Sixty-sixth avenue (Fleet street), thence westerly along Sixty-sixth avenue (Fleet street) to Alderton street, thence northerly along Alderton street to Woodhaven Boulevard, to Eighty-sixth street, to Sixtieth avenue, to Eighty-sixth street, to Fifty-eighth avenue, to Eighty-fourth street, to Fifty-seventh avenue, to Eighty-third street, to Fifty-fourth avenue, to Eighty-second street, to Grand avenue, to Mazeau street, to Caldwell avenue, to Sixty-ninth street, to Sixty-third avenue, to Sixty-ninth Place, to Sixty-ninth street, to Metropolitan avenue, thence westerly along Metropolitan

avenue to the dividing line between the county of Queens and the county of Kings and southerly along said dividing line as it winds and turns to the place of beginning.

Eighth. The eighth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Utopia Parkway extended intersects the waters of the East River, thence southerly along Utopia Parkway extended and Utopia Parkway to the intersection of Utopia Parkway with One Hundred and Sixty-ninth street, thence along One Hundred and Sixty-ninth street to Thirty-second avenue, to One Hundred and Sixty-eighth street, to Crocheron avenue, thence westerly along Crocheron avenue to Northern Boulevard, to Parsons Boulevard, thence southerly along Parsons Boulevard to Forty-fifth avenue, to Kissena Boulevard, to Elder avenue, to One Hundred and Thirty-third street, to North Hempstead Turnpike, thence easterly to One Hundred and Forty-first street, to Fifty-eighth avenue, to Main street, to Fifty-eighth Road, to One Hundred and Forty-second street, to Fifty-ninth avenue, to One Hundred and Forty-eighth street, to Sixtieth avenue, to One Hundred and Fiftieth street, to Horace Harding Boulevard, to One Hundred and Sixty-fourth street, thence southerly along One Hundred and Sixty-fourth street to Seventy-first avenue, thence westerly to Kissena Boulevard, to Seventieth Road, to One Hundred and Fifty-third street, to Jewel avenue, and thence westerly along Jewel avenue to Sixty-ninth Road, to Grand Central Parkway, to Jewel Avenue, to One Hundred and Eighth street, to Sixty-seventh avenue, thence along Sixty-seventh avenue to Ninety-ninth street, thence northerly along Ninety-ninth street to Sixty-fourth avenue, to Ninety-eighth street, to Horace Harding Boulevard, to Ninety-seventh street, to

Fifty-seventh avenue, to Ninety-sixth street, to Christie avenue, to Junction Boulevard, to Fifty-first avenue, to Ninety-second street, to Fifty-second avenue, to Ninetieth street, to Fifty-first avenue, to Broadway, to Pettit Place, to Layton street, to Baxter avenue, to Broadway, to Brooklyn-Queens Connecting Highway, thence northerly along Brooklyn-Queens Connecting Highway to Astoria Boulevard South, to the intersection of Astoria Boulevard South, Thirty-first street and Hoyt avenue South at Columbus Square, thence westerly along Hoyt avenue South to the waters of the East River and the dividing line between the county of Queens and the county of New York, thence northerly along said dividing line to the dividing line between the county of Queens and the county of Bronx, thence easterly along said dividing line to the place of beginning.

Ninth. The ninth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Metropolitan avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Metropolitan avenue to Sixty-ninth street, northerly to Sixty-ninth Place, to Sixty-third avenue, to Sixty-ninth street, to Caldwell avenue, to Mazeau street, to the intersection of Mazeau street, Fifty-seventh avenue and Grand avenue, thence along Grand avenue to Eighty-second street, to Fifty-fourth avenue, to Eighty-third street, to Fifty-seventh avenue, to Eighty-fourth street, to Fifty-eighth avenue, to Eighty-sixth street, to Sixtieth avenue to Eighty-sixth street, to Woodhaven Boulevard, to Alderton street, to Sixty-sixth avenue (Fleet street), to Thornton Place, to Sixty-seventh avenue (Roxton street), to Ninety-ninth street, thence northerly along Ninety-ninth street to

Sixty-fourth avenue, to Ninety-eighth street, to Horace Harding Boulevard, to Ninety-seventh street, to Fifty-seventh avenue, to Ninety-sixth street, to Christie avenue, to Junction Boulevard, to Fifty-first avenue, to Ninety-second street, to Fifty-second avenue, to Ninetieth street, to Fifty-first avenue, to Broadway, to Pettit Place, to Layton street, to Baxter avenue, to Broadway, to Brooklyn-Queens Connecting Highway, thence northerly along Brooklyn-Queens Connecting Highway to Astoria Boulevard South, to the intersection of Astoria Boulevard South, Thirty-first street and Hoyt avenue South at Columbus Square, thence westerly along Hoyt avenue South to the waters of the East River, thence southerly through Hell Gate and East Channel in the East River to Newtown Creek and the dividing line between the county of Queens and the county of Kings, thence easterly along said dividing line to the place of beginning.

Tenth. The tenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Johnson avenue intersects the dividing line between the county of Kings and the county of Queens, thence westerly along Johnson avenue to Porter avenue, to Flushing avenue, to the intersection of Flushing avenue, Irving avenue and Melrose street, thence westerly along Melrose street to Wilson avenue, to Jefferson street, to Evergreen avenue, to Jefferson street, to Bushwick avenue, to Troutman street, to Myrtle avenue, to Broadway, thence southerly along Broadway to Stuyvesant avenue, to Willoughby avenue, to Broadway, to Reid avenue, to De Kalb avenue, to Broadway, to Patchen avenue, to Van Buren street, to Broadway, to Ralph avenue, to Putnam avenue, to Howard avenue, to the north lane of Atlantic avenue, to Ralph avenue, to the

south lane of Atlantic avenue, to Howard avenue, to St. Marks avenue, thence easterly along St. Marks avenue to the intersection of St. Marks avenue, East New York avenue and Watkins street, thence along East New York avenue to Watkins street, to Liberty avenue, to Alabama avenue, to Atlantic avenue, to Georgia avenue, thence southerly to Belmont avenue, to Pennsylvania avenue, to Sutter avenue, to New Jersey avenue, to Linden Boulevard, to Pennsylvania avenue, to Vandalia avenue, thence along Vandalia avenue and Vandalia avenue extended to the waters of Fresh Creek Basin and through the waters of Fresh Creek Basin, Jamaica Bay, Big Channel and Rockaway Inlet to the dividing line between the county of Kings and the county of Queens, thence easterly and northerly along said dividing line to the place of beginning; including the islands in Jamaica Bay within the county of Kings.

Eleventh. The eleventh senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Eastern Parkway intersects Grand Army Plaza, thence easterly along Eastern Parkway to Franklin avenue, to St. Johns Place, to Rogers avenue, to Park Place, to Troy avenue, to Prospect Place, to Schenectady avenue, to Park Place, to Utica avenue, to St. Marks avenue, to Rochester avenue, to Prospect Place, to Buffalo avenue, to Park Place, to Ralph avenue, to St. Marks avenue, to Howard avenue, to the south lane of Atlantic avenue, to Ralph avenue, to the north lane of Atlantic avenue, to Howard avenue, thence northerly along Howard avenue to Putnam avenue, to Ralph avenue, to Broadway, to Van Buren street, to Patchen avenue, to Broadway, to De Kalb avenue, to Reid avenue, to Broadway, to Willoughby avenue, to Stuyvesant avenue, to Broadway, to Myrtle avenue, thence westerly along Myrtle

avenue to Throop avenue, to Vernon avenue, to Tompkins avenue, to Willoughby avenue, to Nostrand avenue, to Willoughby avenue, to Bedford avenue, to De Kalb avenue, to Flatbush avenue Extension, thence southerly along Flatbush avenue Extension to Fulton street, to Rockwell Place (Ninety-fourth street), to Lafayette avenue, to Flatbush avenue, thence southerly along Flatbush avenue to and around Grand Army Plaza to the place of beginning.

Twelfth. The twelfth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where East Twenty-fourth street intersects Quentin Road, thence easterly along Quentin Road to Nostrand avenue, to Gerritsen avenue, to Avenue R, to East Thirty-sixth street, to Flatlands avenue, to Avenue L, to Utica avenue, to Avenue M, to Ralph avenue, to Avenue A, to East Eighty-eighth street, to Ralph avenue, to Church avenue, to Remsen avenue, thence northerly along Remsen avenue to the intersection of Remsen avenue, Lefferts avenue and Utica avenue, thence along Utica avenue to Eastern Parkway; to Troy avenue, to Park Place, to Rogers avenue, to St. John's Place, to Franklin avenue, to Eastern Parkway, to and around the southern end of Grand Army Plaza to Flatbush avenue, thence southerly along Flatbush avenue to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, to the intersection of Flatbush avenue, Foster avenue and Bedford avenue, thence along Bedford avenue to Glenwood Road, to East Twenty-third street, to Campus Road, thence westerly, southerly, and easterly along Campus Road to East Twenty-third street, to Avenue I, to East Twenty-fourth street, to Avenue J, to East Twenty-third street, to Avenue K, to East Twenty-fourth street, to Avenue N, to East Twenty-third street, to Olean street, to East Twenty-fourth street, to the place of beginning.

Thirteenth. The thirteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bay Ridge avenue extended intersects the waters of Upper New York Bay, thence along Bay Ridge avenue extended and Bay Ridge avenue to Shore Road, thence northerly along Shore Road to Ridge avenue (Ridge Boulevard), thence along Ridge avenue and Second avenue to Sixty-fifth street, to Third avenue, to Sixty-third street, to Fourth avenue, to Forty-fifth street, to Fifth avenue, to Thirty-ninth street, to Ninth avenue, to Thirty-seventh street, to Fort Hamilton Parkway, to the intersection of Fort Hamilton Parkway, Prospect Park Southwest, Coney Island avenue and Parkside avenue at Park Circle, thence along Parkside avenue to Flatbush avenue and northerly along Flatbush avenue to and around the eastern side of Grand Army Plaza to Flatbush avenue, to Lafayette avenue, to Rockwell Place (Ninety-fourth street), thence along Rockwell Place (Ninety-fourth street) to Fulton street, to Flatbush avenue, to De Kalb avenue, to the intersection of De Kalb avenue and Fulton street, thence along Fulton street to Duffield street (Fifty-ninth street), to Willoughby street, to Bridge street, to Tillary street, to Duffield street (Fifty-ninth street), to Concord street, to Bridge street, to Prospect street, to Jay street, to Talman street, to Bridge street, thence northerly along Bridge street and Bridge street extended to the waters of the East River and southerly through the waters of the East River, Buttermilk Channel and Upper New York Bay to the place of beginning.

Fourteenth. The fourteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bay Ridge avenue extended intersects the waters of Upper New

York Bay, thence along Bay Ridge avenue extended and Bay Ridge avenue to Shore Road, thence northerly along Shore Road to Ridge avenue (Ridge Boulevard), thence along Ridge avenue and Second avenue to Sixty-fifth street, to Third avenue, to Sixty-third street, to Fourth avenue, to Forty-fifth street, to Fifth avenue, to Thirty-ninth street, to Ninth avenue, to Forty-first street, to the intersection of Forty-first street, Tenth avenue and New Utrecht avenue, thence southerly along New Utrecht avenue to Thirteenth avenue, thence along Thirteenth avenue to Fifty-sixth street, to New Utrecht avenue, to Sixty-third street, to Seventeenth avenue, to Sixty-second street, to Eighteenth avenue, to Shore Parkway, to Bay Nineteenth street, thence southerly along Bay Nineteenth street and Bay Nineteenth street extended to the waters of Gravesend Bay and northerly through the waters of Gravesend Bay, Lower Bay and Upper New York Bay to the place of beginning.

Fifteenth. The fifteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where West Tenth street extended intersects the waters of the Atlantic Ocean, thence northerly along West Tenth street extended and West Tenth street to Surf avenue, to West Twelfth street, to Neptune avenue, to Shell Road, thence northerly to Triton avenue, to West Sixth street, to the intersection of West Sixth street and Shell Road, thence along Shell Road and McDonald avenue to Avenue U, to West street, to Avenue T, to East Second street, to Avenue P, to East Third street, to Avenue O, to East Fourth street, to Avenue N, to East Fifth street, to Avenue L, to Ocean Parkway, to Eighteenth avenue, to East Fifth street, to Fort Hamilton Parkway, to Thirty-seventh street, to Ninth avenue,

to Forty-first street, to the intersection of Forty-first street, Tenth avenue and New Utrecht avenue, thence southerly along New Utrecht avenue to Thirteenth avenue, thence along Thirteenth avenue to Fifty-sixth street, to New Utrecht avenue, to Sixty-third street, to Seventeenth avenue, to Sixty-second street, to Eighteenth avenue, to Shore Parkway, to Bay Nineteenth street, thence southerly along Bay Nineteenth street and Bay Nineteenth street extended to the waters of Gravesend Bay and southerly through the waters of Gravesend Bay, Lower New York Bay and the Atlantic Ocean to the place of beginning.

Sixteenth. The sixteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bedford avenue extended intersects the waters of Sheepshead Bay, thence northerly along Bedford avenue extended and Bedford avenue to Shore Parkway, to East Twenty-third street, to Voorhies avenue, to East Twenty-fourth street, to Quentin Road, thence easterly along Quentin Road to Nostrand avenue, to Gerritsen avenue, to Avenue R, to East Thirty sixth street, to Flatlands avenue, to Avenue L, to Utica avenue, to Avenue M, to Ralph avenue, to Avenue A, to East Eighty-eighth street, to Ralph avenue, to Church avenue, to Remsen avenue, thence northerly along Remsen avenue to the intersection of Remsen avenue, Lefferts avenue and Utica avenue, thence along Utica avenue to Eastern Parkway, to Troy avenue, to Prospect Place, thence easterly along Prospect Place to Schenectady avenue, to Park Place, to Utica avenue, to St. Marks avenue, to Rochester avenue, to Prospect Place, to Buffalo avenue, to Park Place, to Ralph avenue, to St. Marks avenue, to the intersection of St. Marks avenue, East New York avenue and Watkins street, thence along East New York avenue to

Watkins street, to Liberty avenue, to Alabama avenue, to Atlantic avenue, to Georgia avenue, thence southerly to Belmont avenue, to Pennsylvania avenue, to Sutter avenue, to New Jersey avenue, to Linden Boulevard, to Pennsylvania avenue, to Vandalia avenue, thence westerly along Vandalia avenue and Vandalia avenue extended to the waters of Fresh Creek Basin and through the waters of Fresh Creek Basin, Jamaica Bay Big Channel and Rockaway Inlet to Sheepshead Bay and to the place of beginning.

Seventeenth. The seventeenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where West Tenth street extended intersects the waters of the Atlantic Ocean, thence northerly along West Tenth street extended and West Tenth street to Surf avenue, to West Twelfth street, to Neptune avenue, to Shell Road, thence northerly to Triton avenue, to West Sixth street, to the intersection of West Sixth street and Shell Road, thence along Shell Road and McDonald avenue to Avenue U, to West street, to Avenue T, to East Second street, to Avenue P, to East Third street, to Avenue O, to East Fourth street, to Avenue N, to East Fifth street, to Avenue L, to Ocean Parkway, to Eighteenth avenue, to East Fifth street, to Fort Hamilton Parkway, to the intersection of Fort Hamilton Parkway, Prospect Park Southwest, Coney Island avenue and Parkside avenue at Park Circle, thence along Parkside avenue to Flatbush avenue, to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, thence southerly along Flatbush avenue to the intersection of Flatbush avenue, Foster avenue and Bedford avenue, thence along Bedford avenue to Glenwood Road, to East Twenty-third street, to Campus Road, thence westerly,

southerly, and easterly along Campus Road, to East Twenty-third street, to Avenue I, to East Twenty-fourth street, to Avenue J, to East Twenty-third street, to Avenue K, to East Twenty-fourth street, to Avenue N, to East Twenty-third street, to Olean street, to East Twenty-fourth street, to Voorhies avenue, to East Twenty-third street, to Shore Parkway, to Bedford avenue, thence southerly along Bedford avenue and Bedford avenue extended to the waters of Sheepshead Bay and through the waters of Sheepshead Bay, Rockaway Inlet and the Atlantic Ocean to the place of beginning.

Eighteenth. The eighteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Johnson avenue intersects the dividing line between the county of Kings and the county of Queens, thence westerly along Johnson avenue to Porter avenue, to Flushing avenue, to the intersection of Flushing avenue, Irving avenue and Melrose street, thence westerly along Melrose street to Wilson avenue, to Jefferson street, to Evergreen avenue, to Jefferson street, to Bushwick avenue, to Troutman street, to Myrtle avenue, to Throop avenue, to Vernon avenue, to Tompkins avenue, to Willoughby avenue, to Nostrand avenue, to Willoughby avenue, to Bedford avenue, to De-Kalb avenue, to the intersection of De Kalb avenue and Fulton street, thence along Fulton street to Duffield street (Fifty-ninth street), to Willoughby street, to Bridge street, to Tillary street, to Duffield street (Fifty-ninth street), to Concord street, to Bridge street, to Prospect street, to Jay street, to Talman street, to Bridge street, thence northerly along Bridge street and Bridge street extended to the waters of the East River and northerly through the waters of the East River to the waters of

Newtown Creek and the dividing line between the county of Kings and the county of Queens, thence southerly along said dividing line to the place of beginning.

Nineteenth. The nineteenth senate district shall consist of the county of Richmond.

Twentieth. The twentieth senate district shall consist of that part of the county of New York within and bounded by a line beginning at the point where East Forty-first street extended intersects the waters of the East River, thence westerly along East Forty-first street extended and East Forty-first street to First avenue, to East Fortieth street, to Third avenue, to East Thirty-third street, to Lexington avenue, to East Twenty-sixth street, to Third avenue, to East Tenth street, to Fourth avenue, to Wanamaker Place at East Ninth street, thence easterly along East Ninth street to Third avenue, thence southerly along Third avenue and through Cooper Square to the Bowery, thence along the Bowery to East Fourth street, to Lafayette street, to Houston street, thence westerly along Houston street and West Houston street to Hudson street, to the intersection of Hudson street and Eighth avenue at Abingdon Square, thence along Eighth avenue to West Fourteenth street, to Seventh avenue, to West Twenty-fourth street, to Eighth avenue, to West Thirty-first street, to Seventh avenue, to West Thirty-fourth street, to Eighth avenue, to West Thirty-eighth street, to Seventh avenue, to West Thirty-ninth street, to Eighth avenue, to West Fortieth street, to Seventh avenue, to West Fiftieth street, to Avenue of the Americas, to West Fifty-fourth street, to Eighth avenue, to West Fifty-fifth street, to Ninth avenue, thence along Ninth avenue and Columbus avenue to West Sixty-first street,

to Central Park West, thence northerly along Central Park West to Cathedral Parkway at West One Hundred and Tenth street, thence easterly along Cathedral Parkway and West One Hundred and Tenth street to Fifth avenue, to East One Hundredth street, to Madison avenue, to East Ninety-eighth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Ninety-fourth street, to Third avenue, to East Eighty-ninth street, to Lexington avenue, to East Eighty-seventh street, to Third avenue, to East Eighty-fourth street, to Lexington avenue, to East Eighty-second street, to Third avenue, to East Eightieth street, to Second avenue, to East Seventy-fifth stret, to First avenue, to East Seventy-fourth street, to York avenue, thence northerly along York avenue to East Eighty-second street, to East End avenue, to East Eighty-fourth street and Gracie Square, thence easterly along Gracie Square and Gracie Square extended to the waters of the East River and southerly through the waters of the East River to the place of beginning; including Welfare Island.

Twenty-first. The twenty-first senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where West One Hundredth street extended intersects the waters of the Hudson River, thence easterly along West One Hundredth street extended and West One Hundredth street to West End avenue, to West One Hundred and First street, to Broadway, to West One Hundred and Second street, to Amsterdam avenue, to West Ninety-seventh street, to Central Park West, thence northerly along Central Park West and Eighth avenue to West One Hundred and Eighteenth street, to Lenox avenue, to West One Hundred and Seventeenth Street, thence along West One Hundred

and Seventeenth street and East One Hundred and Seventeenth street to Madison avenue, to East One Hundred and Nineteenth street, to Park avenue, to East One Hundred and Twentieth street, to Madison avenue, to East One Hundred and Twenty-fourth street, to Fifth avenue, to East One Hundred and Twenty-fifth street, to Madison avenue, to East One Hundred and Twenty-seventh street, to Fifth avenue, to East One Hundred and Thirtieth street, to Madison avenue, to East One Hundred and Thirty-second street, to Fifth avenue, to West One Hundred and Thirty-fourth street, to Seventh avenue, to West One Hundred and Thirty-third street, to St. Nicholas avenue, to Edgecombe avenue, to West One Hundred and Thirty-seventh street, to St. Nicholas avenue, to West One Hundred and Fifty-second street, to Amsterdam avenue, to West One Hundred and Fifty-third street, to Broadway, to Fort Washington avenue, to West One Hundred and Sixty-first street, thence westerly along West One Hundred and Sixty-first street and West One Hundred and Sixty-first street extended to the waters of the Hudson River and southerly through the waters of the Hudson River to the place of beginning.

Twenty-second. The twenty-second senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East One Hundred and Thirty-fifth street extended intersects the waters of the Harlem River, thence westerly along East One Hundred and Thirty-fifth street extended and East One Hundred and Thirty-fifth street to Madison avenue, to East One Hundred and Thirtieth street, to Fifth avenue, to East One Hundred and Twenty-seventh street, to Madison avenue, to East One Hundred and Twenty-fifth street, to Fifth avenue, to East One Hundred

and Twenty-fourth street, to Madison avenue, to East One Hundred and Twentieth street, to Park avenue, to East One Hundred and Nineteenth street, to Madison avenue, to East One Hundred and Seventeenth street, thence westerly along East One Hundred and Seventeenth street and West One Hundred and Seventeenth street to Lenox avenue, to West One Hundred and Eighteenth street, to Eighth avenue, to Cathedral Parkway at West One Hundred and Tenth street, thence easterly along Cathedral Parkway and West One Hundred and Tenth street to Fifth avenue, to East One Hundredth street, to Madison avenue, to East Ninety-eighth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Ninety-fourth street, to Third avenue, to East Eighty-ninth street, to Lexington avenue, to East Eighty-seventh street, to Third avenue, to East Eighty-fourth street, to Lexington avenue, to East Eighty-second street, to Third avenue, to East Eightieth street, to Second avenue, to East Seventy-fifth street, to First avenue, to East Seventy-fourth street, to York avenue, thence northerly along York avenue to East Eighty-second street, to East End avenue, to East Eighty-fourth street and Gracie Square, thence easterly along Gracie Square and Gracie Square extended to the waters of the East River, thence northerly through the waters of the East River and the Harlem River to the place of beginning; including Randall's Island, Ward's Island, Sunken Meadow Island and Mill Rocks Island.

Twenty-third. The twenty-third senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East One Hundred and Thirty-fifth street extended intersects the waters of the Harlem River, thence westerly along East

One Hundred and Thirty-fifth street extended and East One Hundred and Thirty-fifth street to Madison avenue, to East One Hundred and Thirty-second street, to Fifth avenue, to West One Hundred and Thirty-fourth street, to Seventh avenue, to West One Hundred and Thirty-third street, to St. Nicholas avenue, to Edgecombe avenue, to West One Hundred and Thirty-seventh street, to St. Nicholas avenue, to West One Hundred and Fifty-second street, to Amsterdam avenue, to West One Hundred and Fifty-third street, to Broadway, to Fort Washington avenue, to West One Hundred and Sixty-first street, thence westerly along West One Hundred and Sixty-first street and West One Hundred and Sixty-first street extended to the waters of the Hudson River, thence northerly through the waters of the Hudson River to the Harlem River and the dividing line between the county of New York and the county of Bronx, thence easterly and southerly along said dividing line as it winds and turns to the place of beginning.

Twenty-fourth. The twenty-fourth senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East Forty-first street extended intersects the waters of the East River, thence westerly along East Forty-first street extended and East Forty-first street to First avenue, to East Fortieth street, to Third avenue, to East Thirty-third street, to Lexington avenue, to East Twenty-sixth street, to Third avenue, to East Tenth street, to Fourth avenue, to Wanamaker Place at East Ninth street, thence easterly along East Ninth street to Third avenue, thence southerly along Third avenue and through Cooper Square to the Bowery, thence along the Bowery to East Fourth street, to Lafayette street, to Houston street, thence west-

erly along Houston street and West Houston street to Hudson street, to Bethune street, to Greenwich street, to West Twelfth street, to Hudson street, to Horatio street, to Washington street, to West Fourteenth street, to Tenth avenue, thence southerly along Tenth avenue to Bloomfield street, thence westerly along Bloomfield street and Bloomfield street extended to the waters of the Hudson River, thence through the waters of the Hudson River, Upper Bay, Buttermilk Channel and the East River to the place of beginning; including Ellis Island, Governor's Island and Bedloe's Island.

Twenty-fifth. The twenty-fifth senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where Bloomfield street extended intersects the waters of the Hudson River, thence easterly along Bloomfield street extended and Bloomfield street to Tenth avenue, to West Fourteenth street to Washington street, to Horatio street, to Hudson street, to West Twelfth street, to Greenwich street, to Bethune street, to Eighth avenue, to West Fourteenth street to Seventh avenue, to West Twenty-fourth street, to Eighth avenue, to West Thirty-first street, to Seventh avenue, to West Thirty-fourth street to Eighth avenue, to West Thirty-eighth street, to Seventh avenue, to West Thirty-ninth street, to Eighth avenue to West Fortieth street, to Seventh avenue, to West Fiftieth street, to Avenue of the Americas, to West Fifty-fourth street to Eighth avenue, to West Fifty-fifth street, to Ninth avenue, thence along Ninth avenue and Columbus avenue to West Sixty-first street, to Central Park West, thence notherly along Central Park West to West Ninety-seventh street, to Amsterdam avenue, to West One Hundred and Second street, to Broadway, to West One Hundred and First

street, to West End avenue, to West One Hundredth street, thence westerly along West One Hundredth street and West One Hundredth street extended to the waters of the Hudson River and southerly through the waters of the Hudson River to the place of beginning.

Twenty-sixth. The twenty-sixth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where St. Ann's avenue extended intersects Bronx Kills in the Harlem River, thence northerly along St. Ann's avenue extended and St. Ann's avenue to East One Hundred and Forty-seventh street, to Brook avenue, to East One Hundred and Fifty-sixth street, to Third avenue, to East One Hundred and Fifty-eighth street, to Brook avenue, to East One Hundred and Fifty-ninth street, to St. Ann's avenue, to the intersection of St. Ann's avenue, Third avenue and Boston Road, thence along Boston Road to the intersection of Boston Road, Jefferson Place and Crotona avenue, thence along Crotona avenue to East One Hundred and Seventieth street, to Clinton avenue, to Crotona Park South, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Third avenue, to East Tremont avenue, thence westerly along East Tremont avenue and West Tremont avenue to the Harlem River and southerly through the waters of the Harlem River to the place of beginning.

Twenty-seventh. The twenty-seventh senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where St. Ann's avenue extended intersects Bronx Kills in the Harlem River, thence northerly along St. Ann's avenue extended and St. Ann's avenue to East One Hundred and Forty-seventh street, to Brook avenue, to East one Hun-

dred and Fifty-sixth street, to Third avenue, to East One Hundred and Fifty-eighth street, to Brook avenue, to East One Hundred and Fifty-ninth street, to St. Ann's avenue, to the intersection of St. Ann's avenue, Third avenue and Boston Road, thence along Boston Road to the intersection of Boston Road, Jefferson Place and Crotona avenue, thence along Crotona avenue to East One Hundred and Seventieth street, to Clinton avenue, to Crotona Park South, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Third avenue, to East Tremont avenue, thence southeasterly along East Tremont avenue to Bronx Park avenue, to East One Hundred and Eightieth street, to Morris Park avenue, thence southerly along Morris Park avenue and Morris Park avenue extended to East One Hundred and Seventy-seventh street, to Rosedale avenue, to East One Hundred and Seventy-second street, to Noble avenue, to Watson avenue, to the intersection of Watson avenue, Metcalf avenue and Sound View avenue at Ludlow Square, thence along Sound View avenue to Lafayette avenue, to Beach avenue, to Bronx River avenue, to Underhill avenue, thence along Underhill avenue and Underhill avenue extended to the East River and westerly through the waters of the East River to the place of beginning; including Riker's Island, North Brother Island and South Brother Island.

Twenty-eighth. The twenty-eighth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where West Tremont avenue extended intersects the Harlem River, thence easterly along West Tremont avenue extended, West Tremont avenue and East Tremont avenue to Bronx Park avenue, to East One Hundred and Eightieth street, to Morris Park avenue, thence northerly along Morris

Park avenue to Amethyst street, to Rhinelander avenue, to Amethyst street, to Sagamore street, to Unionport Road, to the intersection of Unionport Road, Bronx Park East and Bronxdale avenue, thence along Bronxdale avenue to Cruger Avenue, to Brady avenue, to Bogart avenue, to Woodmansten Place, to Paulding avenue, to Westchester Esplanade, and thence northerly along Westchester Esplanade to Bronx and Pelham Parkway, to the intersection of Bronx and Pelham Parkway, Williamsbridge Road and Laconia avenue, thence along Laconia avenue to Mace avenue, to Ten Broeck avenue, to Allerton avenue, to Throop avenue, to Adée avenue, to Bouck avenue, to Burke avenue, to Yates avenue, to Boston Road, to Burke avenue, to Cruger avenue, to Magenta street, to Holland avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Olinville avenue, to Duncomb street and Duncomb street extended to Bronx River Parkway, thence southerly along Bronx River Parkway to East Two Hundred and Fourth street extended, thence westerly along East Two Hundred and Fourth street extended and East Two Hundred and Fourth street to Webster avenue, to East One Hundred and Ninety-ninth street, to Decatur avenue, to East Two Hundred and First street, to Marion avenue, to Bedford Park Boulevard, thence along Bedford Park Boulevard to Villa avenue, to East Two Hundred and Fourth street, thence easterly along East Two Hundred and Fourth street to East Mosholu Parkway South, thence southerly to Bainbridge avenue, thence along Bainbridge avenue and East Two Hundred and Fifth street to Hull avenue, to East Two Hundred and Ninth street, to Decatur avenue, to Gun Hill road, thence westerly along Gun Hill Road to Jerome avenue, to West Mosholu Parkway North, to West Gun Hill Road, thence westerly along West Gun Hill Road

and Van Courtlandt Park South to Major Deegan Expressway, to West Two Hundred and Thirty-ninth street, to Broadway, to West Two Hundred and Thirty-eighth street, to Bailey avenue, to Major Deegan Expressway (Albany Crescent), to West Two Hundred and Thirty-first street, to Bailey avenue, to West Kingsbridge Road, thence westerly along West Kingsbridge Road to the dividing line between the county of New York and the county of Bronx, thence southerly along said dividing line and through the Harlem River to the place of beginning.

Twenty-ninth. The twenty-ninth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where Underhill avenue extended intersects the East River, thence along Underhill avenue extended and Underhill avenue to Bronx River avenue to Beach avenue, to Lafayette avenue, to Sound View avenue, thence along Sound View avenue through Ludlow Square to the intersection of Metcalf avenue, Sound View avenue and Watson avenue, thence along Watson avenue to Noble avenue, to East One Hundred and Seventy-second street, to Rosedale avenue, to East One Hundred and Seventy-seventh street, to Morris Park avenue extended, thence along Morris Park avenue extended and Morris Park avenue to Amethyst street, to Rhinelander avenue, to Amethyst street, to Sagamore street, to Unionport Road, to the intersection of Unionport Road, Bronx Park East and Bronxdale avenue, thence along Bronxdale avenue to Cruger avenue, to Brady avenue, to Bogart avenue, to Woodmansten Place, to Paulding avenue, to Westchester Esplanade, and thence northerly along Westchester Esplanade to Bronx and Pelham Parkway, to the intersection of Bronx and Pelham Parkway, Williamsbridge Road and Laconia avenue,

thence along Laconia avenue to Mace avenue, to Ten Broeck avenue, to Allerton avenue, to Throop avenue, to Adee avenue, to Bouck avenue, to Burke avenue, to Yates avenue, to Boston Road, to Burke avenue, to Cruger avenue, to Magenta street, to Holland avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Olinville avenue, to Duncomb street and Duncomb street extended to the Bronx River Parkway, thence southerly along Bronx River Parkway to East Two Hundred and Fourth street extended, thence westerly along East Two Hundred and Fourth street extended and East Two Hundred and Fourth Street to Webster avenue, to East One Hundred and Ninety-ninth street, to Decatur avenue, to East Two Hundred and First street, to Marion avenue, to Bedford Park Boulevard, thence along Bedford Park Boulevard to Villa avenue, to East Two Hundred and Fourth street, thence easterly along East Two Hundred and Fourth street to East Mosholu Parkway South, thence southerly to Bainbridge avenue, thence along Bainbridge avenue and East Two Hundred and Fifth street to Hull avenue, to East Two Hundred and Ninth street, to Decatur avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Jerome avenue, to West Mosholu Parkway North, to West Gun Hill Road, thence westerly along West Gun Hill Road and Van Courtlandt Park South to Major Deegan Expressway, to West Two Hundred and Thirty-ninth street, to Broadway, to West Two Hundred and Thirty-eighth street, to Bailey avenue, to Major Deegan Expressway (Albany Crescent) to West Two Hundred and Thirty-first Street, to Bailey avenue, to West Kingsbridge Road, thence westerly along West Kingsbridge Road to the dividing line between the county of New York and the county of Bronx, thence northerly and westerly

along said line as it winds and turns to the Harlem River and westerly through the waters of the Harlem River to the Hudson River, thence northerly through the waters of the Hudson River to the Bronx-Westchester county line and easterly along said line to the waters of Long Island Sound, thence southerly through the waters of Long Island Sound and the East River to the place of beginning; including City Island, Hunter's Island, Hart Island, Twin Island, High Island, Middle Reef Island, Rat Island, The Blauzes, Chimney Sweeps, Cuban Ledge, Big Tom, Green Flats, Hog Island, East Nonations, South Nonations, and all other islands in Long Island Sound within the boundary line of the county of Bronx.

Thirtieth. The thirtieth senate district shall consist of that part of Westchester county comprising the town of Pelham, town of Rye, town of Mamaroneck, and the city of New Rochelle, city of Rye, and that portion of the city of Mount Vernon described as follows:

Beginning at the intersection of Mount Vernon avenue with the boundary line between the city of Yonkers and the city of Mount Vernon, thence easterly along Mount Vernon avenue to North Terrace avenue, to Oak street, to North High Street, to Elm street, to West Lincoln avenue, to Howard street, to North High street, to William street, to North Terrace avenue, to West Broad street and westerly along West Broad street to the boundary line between the city of Mount Vernon and the city of Yonkers, thence northerly, easterly, southerly, westerly and northerly along the city line of the city of Mount Vernon to the place of beginning.

Thirty-first. The thirty-first senate district shall consist of that part of Westchester county comprising the

town of Bedford, town of Cortlandt, town of Harrison, town of Lewisboro, town of Mount Pleasant, town of Newcastle, town of North Castle, town of North Salem, town of Ossining, town of Poundridge, town of Somers, town of Yorktown, town of Scarsdale, town of Eastchester, city of Peekskill and that portion of the city of White Plains described as follows:

Beginning at the intersection of Alexander avenue with the boundary line between the city of White Plains and the town of Greenburgh, thence easterly along Alexander avenue to Chase avenue, to Lee avenue, to Putnam avenue, to Chatterton Parkway, to Hawley street, to Trenton avenue, to Whitney street, to Battle avenue, to Harding avenue, to Chatterton avenue, to Central avenue, to the intersection of Central avenue, Russell street and County Center Road, and thence along County Center Road to the boundary line between the city of White Plains and the town of Greenburgh, thence northerly, easterly, southerly, westerly and northerly along the city line of the city of White Plains to the place of beginning.

Thirty-second. The thirty-second senate district shall consist of that part of Westchester county comprising the city of Yonkers, town of Greenburgh and portions of the cities of Mount Vernon and White Plains, described as follows:

That portion of the city of Mount Vernon beginning at the intersection of Mount Vernon avenue with the boundary line between the city of Yonkers and the city of Mount Vernon, thence along Mount Vernon avenue to North Terrace avenue, to Oak street, to North High street, to Elm street, to West Lincoln avenue, to Howard street, to North High street, to William street, to North Terrace avenue, to West Broad street and westerly along West

Broad street to the boundary line between the city of Mount Vernon and the city of Yonkers, thence southerly along the city line of the city of Mount Vernon to the place of beginning.

Also that portion of the city of White Plains beginning at the intersection of Alexander avenue with the boundary line between the city of White Plains and the town of Greenburgh, thence easterly along Alexander avenue to Chase avenue, to Lee avenue, to Putnam avenue, to Chatterton Parkway, to Hawley street, to Trenton avenue, to Whitney street, to Battle avenue, to Harding avenue, to Chatterton avenue, to Central avenue, to the intersection of Central avenue, Russell street and County Center Road, and along County Center Road to the boundary line between the city of White Plains and the town of Greenburgh, thence westerly and southerly along the city line of the city of White Plains to the place of beginning.

Thirty-third. The thirty-third senate district shall consist of the counties of Orange and Rockland.

Thirty-fourth. The thirty-fourth senate district shall consist of the counties of Delaware, Greene, Sullivan and Ulster.

Thirty-fifth. The thirty-fifth senate district shall consist of the counties of Columbia, Dutchess and Putnam.

Thirty-sixth. The thirty-sixth senate district shall consist of the county of Albany.

Thirty-seventh. The thirty-seventh senate district shall consist of the counties of Rensselaer and Washington.

Thirty-eighth. The thirty-eighth senate district shall consist of the counties of Schenectady and Schoharie.

Thirty-ninth. The thirty-ninth senate district shall consist of the counties of Essex, Saratoga and Warren.

Fortieth. The fortieth senate district shall consist of the counties of Clinton, Franklin and St. Lawrence.

Forty-first. The forty-first senate district shall consist of the counties of Fulton, Hamilton, Herkimer and Montgomery.

Forty-second. The forty-second senate district shall consist of the county of Oneida.

Forty-third. The forty-third senate district shall consist of the counties of Lewis, Jefferson and Oswego.

Forty-fourth. The forty-fourth senate district shall consist of that part of the county of Onondaga within the city of Syracuse within and bounded by a line beginning at a point where Erie Boulevard intersects the east city line, thence westerly along Erie Boulevard to the easterly end of Lombard street, to Cherry street, to East Fayette street, to South Crouse avenue, to East Genesee street, to the intersection of East Genesee street and East Jefferson street, thence along East Jefferson street to the intersection of East Jefferson street and Montgomery street, thence along Montgomery street to East Onondaga street, to the intersection of West Onondaga street, South Clinton street and Gifford street, thence along Gifford street to South Wilbur avenue, to Tennyson avenue, to South Lowell avenue, to Tompkins street, to North Lowell avenue, to Ulster street, to West Fayette street, to Schuyler street, to North Lowell avenue, to West Genesee street, to Emerson avenue, to Erie street, to Willis avenue, to Herkimer street, thence westerly along Herkimer street and Herkimer street extended to the west city line and

northerly, easterly and southerly along said city line as it winds and turns to the place of beginning; together with the towns of Clay, Cicero, Camillus, Elbridge, Geddes, Lysander, Marcellus, Skaneateles, Salina and Van Buren.

Forty-fifth. The forty-fifth senate district shall consist of that part of the county of Onondaga within the city of Syracuse within and bounded by a line beginning at a point where Erie Boulevard intersects the east city line, thence westerly along Erie Boulevard to the easterly end of Lombard street, to Cherry street, to East Fayette street, to South Crouse avenue, to East Genesee street, to the intersection of East Genesee street and East Jefferson street, thence along East Jefferson street to the intersection of East Jefferson street and Montgomery street, thence along Montgomery street to East Onondaga street, to the intersection of West Onondaga street, South Clinton street and Gifford street, thence along Gifford street to South Wilbur avenue, to Tennyson avenue, to South Lowell avenue, to Tompkins street, to North Lowell avenue, to Ulster street, to West Fayette street, to Schuyler street, to North Lowell avenue, to West Genesee street, to Emerson avenue, to Erie street, to Willis avenue, to Herkimer street, thence westerly along Herkimer street and Herkimer street extended to the west city line and southerly, easterly and northerly along said city line as it winds and turns to the place of beginning; together with the towns of De Witt, Fabius, Lafayette, Manlius, Onondaga, Otisco, Pompey, Spafford, Tully; also the Onondaga Indian Reservation.

Forty-Sixth. The forty-sixth senate district shall consist of the counties of Madison, Cortland, Chenango and Otsego.

Forty-seventh. The forty-seventh senate district shall consist of the county of Broome.

Forty-eighth. The forty-eighth senate district shall consist of the counties of Cayuga, Tompkins and Tioga.

Forty-ninth. The forty-ninth senate district shall consist of the counties of Steuben and Chemung.

Fiftieth. The fiftieth senate district shall consist of the counties of Wayne, Ontario, Seneca, Yates and Schuyler.

Fifty-first. The fifty-first senate district shall consist of that part of the county of Monroe within the city of Rochester within and bounded by a line beginning at a point where the Genesee River extended intersects the waters of Lake Ontario, thence southerly through the waters of the Genesee River to Avenue E, to Conkey avenue, to Avenue D, to Harris street, to Avenue A, to Gladys street, to Nielson street, to Harris street, to Clifford avenue, to Durgin street, to Evergreen street, to Conkey avenue, to Clifford avenue, to Clinton avenue North, to Westcott street, to St. Paul street, to Cumberland street, to Clinton avenue North, to Mortimer street, to Water street North, thence along Water street North and Water street South to Broad street, to the waters of the Genesee River and southerly through the waters of the Genesee River to Clarissa street, thence easterly along Clarissa street to Mt. Hope avenue, to Averill avenue, to South avenue, to Caroline street, to Goodman street South, to Richard street, to Wilcox street, to Monroe avenue, to Canterbury Road, to Vassar street, to Harvard street, to Berkeley street, to Milburn street, to Culver Road, to Monroe avenue, to the city line, thence westerly, southerly and northerly along said city line as it winds and turns to

the waters of Lake Ontario and through the waters of Lake Ontario to the Genesee River and the place of beginning; together with the towns of Chili, Clarkson, Gates, Greece, Henrietta, Hamlin, Ogden, Parma, Riga, Sweden, Wheatland and Rush.

Fifty-second. The fifty-second senate district shall consist of that part of the county of Monroe with the city of Rochester within and bounded by a line beginning at a point where the Genesee River extended intersects the waters of Lake Ontario, thence southerly through the waters of the Genesee River to Avenue E, to Conkey avenue, to Avenue D, to Harris street, to Avenue A, to Gladys street, to Nielson street, to Harris street, to Clifford avenue, to Durgin street, to Evergreen street, to Conkey avenue, to Clifford avenue, to Clinton avenue North, to Westcott street, to St. Paul street, to Cumberland street, to Clinton avenue North, to Mortimer street, to Water street North, thence along Water street North and Water street South to Broad street, to the waters of the Genesee River and southerly through the waters of the Genesee River to Clarissa street, thence easterly along Clarissa street to Mt. Hope avenue, to Averill avenue, to South avenue, to Caroline street, to Goodman street South, to Richard street, to Wilcox street, to Monroe avenue, to Canterbury Road, to Vassar street, to Harvard street, to Berkeley street, to Milburn street, to Culver Road, to Monroe avenue, to the city line, thence easterly and northerly along said city line as it winds and turns to the waters of Lake Ontario and through the waters of Lake Ontario to the Genesee River and the place of beginning; including the towns of Brighton, Mendon, Penfield, Perinton, Pittsford, Webster and Irondequoit.

Fifty-third. The fifty-third senate district shall consist of the counties of Livingston, Allegany, Wyoming, Genesee and Orleans.

Fifty-fourth. The fifty-fourth senate district shall consist of the county of Niagara.

Fifty-fifth. The fifty-fifth senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Delaware avenue intersects the north city line, thence southerly along Delaware avenue to Hertel avenue, to Colvin avenue, to Linden avenue, to Delaware avenue, to Knox avenue, to Edgepark avenue, to Amherst street, to Meadow Road, to Middlesex Road, to Delaware avenue, to West Delevan avenue, to Main street, to Masten avenue, to Woodlawn avenue, to Chester street, to Glenwood avenue, to Masten avenue, to Laurel street, to Jefferson avenue, to Best street, to Herman street, to the intersection of Herman street, Genesee street and High street, thence along High street to Fox street, to Genesee street, to Monroe street, to Beckwith street, to Adams street, to Broadway, to Monroe street, to Peckham street, to Adams street, to Howard street, to Monroe street, to Clinton street, to Madison street, to East Eagle street, thence westerly along East Eagle street to Oak street, to Clinton street, to Ellicott street, to East Eagle street, to Main street, to Erie street, to Franklin street, to Church street, to the intersection of Church street, Upper and Lower Terrace and Mechanic street, thence along Lower Terrace to Charles street, to Perry Boulevard, to Erie street, thence along Erie street and Erie street extended to the waters of Buffalo Harbor and northerly through the waters of Buffalo Harbor and the Niagara River to a point where the north city line extended intersects the

waters of the Niagara River, thence easterly along said city line extended and said city line to the place of beginning, including Squaw Island and Bird Island Pier Park; together with the towns of Grand Island and Tonawanda; also including the city of Tonawanda.

Fifty-sixth. The fifty-sixth senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Delaware avenue intersects the north city line, thence southerly along Delaware avenue to Hertel avenue, to Colvin Avenue, to Linden avenue, to Delaware avenue, to Knox avenue, to Edgepark avenue, to Amherst street, to Meadow Road, to Middlesex Road, to Delaware avenue, to West Delevan avenue, to Main street, to Masten avenue, to Woodlawn avenue, to Chester street, to Glenwood avenue, to Masten avenue, to Laurel street, to Jefferson avenue, to Best street, to Herman street, to the intersection of Herman street, Genesee street and High street, thence along High street to Fox street, to Genesee street, to Monroe street, to Beckwith street, to Adams street, to Broadway, to Monroe street, to Peckham street, to Emslie street, to William street, to Stanton street, to Peckham street, to Smith street, to Clinton street, to Babcock street, to Dorothy avenue, to Scoville avenue, to Clinton street, to Willet street, to Griswold street, to the east city line, thence northerly and westerly along said city line to the place of beginning; together with the town of Cheektowaga.

Fifty-seventh. The fifty-seventh senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Griswold street intersects the east city line, thence westerly along Griswold street to Willet street, to

Clinton street, to Scoville avenue, to Dorothy avenue, to Babcock street, to Clinton street, to Smith street, to Peckham street, to Stanton street, to William street, to Emslie street, to Peckham street, to Adams street, to Howard street, to Monroe street, to Clinton street, to Madison street, to East Eagle street, thence westerly along East Eagle street to Oak street, to Clinton street, to Ellicott street, to East Eagle street, to Main street, to Erie street, to Franklin street, to Church street, to the intersection of Church street, Upper and Lower Terrace and Mechanic street, thence along Lower Terrace to Charles street, to Perry Boulevard, to Erie street, thence along Erie street and Erie street extended to the waters of Buffalo Harbor and southerly through the waters of Buffalo Harbor and Lake Erie to a point where the south city line extended intersects the waters of Buffalo Harbor, thence easterly and northerly along said city line extended and said city line to the place of beginning; together with the city of Lackawanna and the towns of Amherst, Clarence, Newstead, Lancaster, Alden, West Seneca, Elma, Marilla, Hamburg, Orchard Park, Aurora, Wales, Evans, Eden, Boston, Colden, Holland, Brant, North Collins, Collins, Concord and Sardinia; also that part of the Cattaraugus Indian Reservation and that part of the Tonawanda Indian Reservation within the county of Erie.

Fifty-eighth. The fifty-eighth senate district shall consist of the counties of Chautauqua and Cattaraugus. Added L.1953, c. 893; amended L.1954, c. 2, eff. Jan. 18, 1954; L.1954, c. 821, § 1, eff. June 10, 1954.

§ 122. Present assembly districts

The assembly districts of this state, as existing immediately before the enactment of this article, shall continue

to be the assembly districts of the state until the expiration of the terms of the members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations and except for the election of delegates to a state or judicial district convention; members of a state committee, members of a county committee or any other party office or position, and any public office to be filled for a term or terms commencing on or after or to continue beyond January first, nineteen hundred fifty-five. Added L. 1953, c. 893; amended L. 1954, c. 821, § 2, eff. June 10, 1954.

§ 123. Apportionment of members of assembly

Except as provided in section one hundred twenty-two, the number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

In the county of Albany, two.
In the county of Allegany, one.
In the county of Bronx, twelve.
In the county of Broome, two.
In the county of Cattaraugus, one.
In the county of Cayuga, one.
In the county of Chautauqua, one.
In the county of Chemung, one.
In the county of Chenango, one.
In the county of Clinton, one.
In the county of Columbia, one.
In the county of Cortland, one.
In the county of Delaware, one.
In the county of Dutchess, one.
In the county of Erie, eight.
In the county of Essex, one.

In the county of Franklin, one.
In the counties of Fulton and Hamilton, one.
In the county of Genesee, one.
In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, one.
In the county of Kings, twenty-two.
In the county of Lewis, one.
In the county of Livingston, one.
In the county of Madison, one.
In the county of Monroe, four.
In the county of Montgomery, one.
In the county of Nassau, six.
In the county of New York, sixteen.
In the county of Niagara, two.
In the county of Oneida, two.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, thirteen.
In the county of Rensselaer, one.
In the county of Richmond, two.
In the county of Rockland, one.
In the county of St. Lawrence, one.
In the county of Saratoga, one.
In the county of Schenectady, one.
In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, one.

In the county of Suffolk, three.
In the county of Sullivan, one.
In the county of Tioga, one.
In the county of Tompkins, one.
In the county of Ulster, one.
In the county of Warren, one.
In the county of Washington, one.
In the county of Wayne, one.
In the county of Westchester, six.
In the county of Wyoming, one.
In the county of Yates, one.
Added L. 1953, c. 893, eff. Nov. 19, 1953.

§ 124. New assembly districts

The supervisors in each of the aforesaid counties, which are by the provisions of this article entitled to more than one member of assembly, shall meet on the fifteenth day of December nineteen hundred fifty-three, or on such other date as they shall determine but not later than the fifteenth day of March, nineteen hundred fifty-four at the place where their last meeting was held; organize by appointing one of their number as chairman and another as secretary; and proceed to divide such county into as many assembly districts as it is entitled to members of assembly. In any case where, prior to the effective date of this act, the supervisors of any such county have met on a date other than the fifteenth day of December, nineteen hundred fifty-three, organized and divided their county into assembly districts, all of the acts and proceedings of said supervisors in so meeting, organizing and dividing such county into assembly districts are hereby validated, ratified and confirmed.

In order to facilitate the division of such counties into assembly districts, there shall be made available to the

supervisors of such counties by the joint legislative committee on reapportionment created by the legislature by resolution adopted March twenty-ninth, nineteen hundred forty-nine and extended from time to time by resolutions duly adopted, information, data, statistics and maps in the possession of said joint legislative committee on reapportionment and pertinent to the division of such counties into assembly districts provided, however, that original maps prepared by the joint legislative committee on reapportionment and original data and statistics furnished the joint legislative committee on reapportionment by the United States bureau of the census shall at all times remain in the possession and under the control of the joint legislative committee on reapportionment. The accuracy of such information, data, statistics and maps shall be certified by the chairman of the joint legislative committee on reapportionment or by such member of said committee's staff as he may designate for that purpose.

The supervisors of each such county shall thereupon make a certificate in duplicate containing a description of each assembly district in the county, and specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the nineteen hundred fifty federal census.

In any city comprising one or more counties in which there is no board of supervisors, the members of the council of said city shall constitute a board for the division of the counties in such city into assembly districts; meet at the same time and in the same manner organize; and make such divisions in said counties and certificates as boards of supervisors in other counties are required to do.

Each certificate shall be signed by a majority of such supervisors respectively, except in cities comprising one or more counties in which there is no board of supervisors, and in such cities by a majority of the council of each said city. The supervisors or councilmen shall cause duplicate certificates to be filed in the office of the secretary of state and in the office of the clerk of the respective counties.

In any case where, after the supervisors of a county or the members of the council of a city comprising one or more counties in which there is no board of supervisors have met but before they have completed the division of such county or counties into assembly districts, new supervisors or new members of the council of such city have been elected and have taken office, such new supervisors or new members of the council of such city shall meet, organize and shall complete the division of such county or counties into assembly districts and shall meet and sign the certificate or certificates as herein provided. Added L.1953, c. 893; amended L.1954, c. 497, eff. April 6, 1954.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 10 1962
JOHN F. DAVIS, CLERK

(36912)

No. 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Appellants,

against

CAROLINE K. SIMON, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; PAUL R. SCREVANE, President of the City Council of the City of New York; EUGENE H. NICKERSON, County Executive, Nassau County; LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County; ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County; DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PAUL R. SCREVANE, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS AND THOMAS MALLEE, APPELLEES

LEO A. LARKIN,
Corporation Counsel of the City of New York
Municipal Building,
New York 7, N. Y.
Attorney for Paul R. Screvane, et al., Appellees

GEORGE H. P. DWIGHT,
BENJAMIN OFFNER,
of Counsel

32 CASE PRESS INC., 421 Hudson St., N. Y.—ORegon 5-4540

INDEX

PAGE

Introduction 1

The Questions Presented are Substantial 3

The Method of Legislative Apportionment of Both the Senate and the Assembly has Resulted in a Substantial Impairment of the Voting Power of the Majority 4

The Question of Irrationality 10

Conclusion 18

CITATIONS

Cases:

Baker v. Carr, 369 U. S. 186 (1962) 8, 10, 11

Baker v. Carr, 206 F. Supp. 341 (M. D. Tenn. 1962) 10

Matter of Fay, 291 N. Y. 198 (1943) 13

Scholle v. Hare, 369 U. S. 429 (1962) 8

Toombs v. Fortson, 205 F. Supp. 248 (N.D. Ga. 1962) 10

WMCA v. Simon, 370 U. S. 190 (1962) 2, 7, 8

WMCA v. Simon, 202 F. Supp. 741 (S.D.N.Y. 1962) 7

United States Constitution:

Amendment XIV 2, 3, 4, 8, 10, 11, 18

PAGE

New York State Constitution:

Art. III, §1 4
Art. III, §2 5
Art. III, §§2-5 4
Art. III, §§4, 5 5
Art. III, §4, par. 1 ..... 4, 5
Art. III, §4, par. 3 13
Art. III, §4, par. 2 12
Art. III, §5 4
Art. III, §5, par. 2 15
Art. III, §5, par. 4 14

Statutes:

N. Y. Laws 1953, c. 893 4

Miscellaneous:

N. Y. Legis. Doc. (1953), No. 98 5
N. Y. Legis. Doc. (1950), No. 31 6
N. Y. Legis. Man. 1961-62 5
3 New York State Constitution Convention (1894), Revised Record 1900 15
Brief of Abe Stark, et al., WMCA v. Simon, No. 836, October Term, 1961 ..... 2, 8
Appellants' Jurisdictional Statement, WMCA v. Simon, No. 460, October Term, 1962 .....1, 2, 3, 9, 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

WMCA, INC., *et al.*,

Appellants,

–v–

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PAUL R. SCREVANE, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS AND THOMAS MALLEE, APPELLEES

This brief is submitted by appellee Paul R. Screvane, as President of the City Council of the City of New York, and appellees Denis J. Mahon, James Power, John R. Crews and Thomas Mallee, as Commissioners of the Board of Elections of the City of New York, in support of appellants' jurisdictional statement filed September 25, 1962 (the "Jurisdictional Statement"). The position of these appellees is that of the City of New York and for convenience they will be collectively called the City of New York or the City.

The City of New York answered, admitting the allegations of the complaint (R. 41-42), and in the prior appeal to this Court submitted a brief in support of appellants' jurisdictional statement. See Brief of Abe Stark, et al., *WMCA* v. *Simon*, October Term, 1961, No. 836. At the hearing held by the court below on August 1, 1962, following this Court's vacatur of the prior judgment of dismissal (370 U. S. 190), the City supported appellants' claims and offered Hon. Abraham D. Beame, Comptroller of the City of New York, as a witness to prove the allegation of the complaint that the legislature of the State of New York for a number of years has unjustly discriminated against large segments of the population of the state in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the state through the exercise of its taxing powers (complaint, par. 18; R. 12).*

The City will not repeat the introductory portions of the Jurisdictional Statement (pp. 2-8). It endorses the matters therein set forth as a complete and accurate summary of the jurisdictional facts, the questions presented and the proceedings and opinions below. It also supports the arguments of appellants that the questions presented are substantial.** The purpose of the City's brief is to supple-

---

* The opinion of District Judge Levet misinterprets as a concession a statement made by counsel for the City at the hearing (opinion below, p. 4). The statement quoted by Judge Levet related only to the City's offer of proof through Comptroller Beame, as the context of the statement plainly shows (R. 345-346, 371-374). The City's offer of proof was rejected by the court below (R. 374). See Jurisdictional Statement at pp. 21-22.

** The City's position, however, is that the only valid method of apportionment under the Equal Protection Clause is for both houses of the legislature to be proportionate to population. Only if this Court were to reject this position would the City support the position that one house need not be proportionate to population provided there is not too great a disparity from population. See Jurisdictional Statement at pp. 10-11.

ment the discussion in the Jurisdictional Statement as to why the questions presented are so substantial as to require plenary consideration by this Court.

The Questions Presented Are Substantial

Fairly comprised within the questions presented in the Jurisdictional Statement are the following subsidiary questions:

(1) When the method of legislative apportionment in a state results in a substantial impairment of the voting power of the majority of the state's population in *both* houses of a two-house legislature, can such a method of apportionment be justified under the Equal Protection Clause *on any ground whatsoever?*

The City contends that it cannot; proof of substantial impairment of the voting power of the majority in both houses of the legislature establishes a *per se* violation of the Equal Protection Clause.

(2) Assuming, *arguendo*, that a ground for justification may exist under the circumstances of a particular legislative apportionment, does the burden of proof of such justification rest on the party attempting to sustain the constitutionality of the apportionment, or must plaintiff prove *absence of justification* in addition to the existence of a substantial impairment of the majority's voting power in both houses of the legislature?

The City contends that at least a *prima facie* case of unconstitutionality is established by proof of a substantial impairment of the majority's voting power in both houses of the legislature, and that where, as in this case, no proof

to justify the impairment was offered, appellants' claim must be sustained.

(3) Assuming, *arguendo*, that whether a state's method of legislative apportionment is a violation of the Equal Protection Clause depends on the extent to which it is an irrational "crazy quilt," is New York's method of apportionment invalid under such a test?

The City contends that New York's method of legislative apportionment is invalid, even under a "crazy quilt" test.

The Method of Legislative Apportionment of Both the Senate and the Assembly has Resulted in a Substantial Impairment of the Voting Power of the Majority

The legislative power of the State of New York is vested in a two-house legislature, composed of the Senate and the Assembly. N. Y. CONST., Art. III, §1. Legislative apportionment is effected by statute, in accordance with the method of apportionment prescribed by the state constitution. See *Id.* §§2-5. The county is the basic unit of area for apportionment purposes,* except that two sparsely populated counties, Fulton and Hamilton,** are treated as one. *Id.* §5.

A legislative apportionment was effected in New York State in 1953, based on the 1950 federal census figures. See N. Y. LAWS 1953, c. 893. Subject to the outcome of this ap-

---

* No county may be divided in forming a senate district, except to make two or more districts wholly within the county. N. Y. CONST., Art. III §4, par. i. Assemblymen are apportioned by counties. *Id.* §5.

** Hamilton County is one of the largest counties in the state. (See Appendix C to opinion below, p. 35a)

peal, a new legislative apportionment must be effected before 1966, upon the basis of the 1960 federal census figures. In the ten-year period from 1950 to 1960 the population of New York State* has increased from 14,203,449 to 16,240,786.

The number of assemblymen is fixed at 150. N. Y. CONST., Art. III, §2. The number of senators is fixed at not less than 50 and may vary with each apportionment. *Id.* §§2, 4, par. 3. In the 1953 apportionment it was 58; in the pending apportionment based on the 1960 census, it will be 57.

As a result of the 1953 legislative apportionment a minority of 37.5% of the population of the state elected a majority of the members of the Assembly and a minority of 40.9% of the population of the state elected a majority of the members of the Senate. After the legislature is reapportioned based on the 1960 census, these figures will become 37.0% for the Assembly and 38.1% for the Senate, respectively.**

The City of New York, by far the largest population center in the state, had 53.2% of the population of the state in 1950 yet was apportioned only 43.3% of the assembly-

---

* New York uses *citizen* population as the measure for apportionment purposes, see N. Y. CONST., Art. III, §§4, 5, and in this brief "population" means citizen population.

** These percentages are determined by arithmetic, using the total population of the 76 least populous assembly districts and the 30 (in the 1953 apportionment) and 29 least populous senate districts, respectively. The sources of the figures for the 1953 apportionment are N. Y. LEGIS. MAN. 1961-62 at 722-45 (senate districts) and *Report of the Joint Legislative Committee on Reapportionment*, N. Y. LEGIS. Doc. (1953) No. 98, Ex. E (assembly districts). The figures for an apportionment based on the 1960 census are found in Appendix A (senate districts partial) and Appendix B (assembly districts) to the opinion below, pp. 31a, 33a.

men and 43.1% of the senators in the 1953 apportionment. The 1960 federal census shows that New York City now has 45.8% of the state's population. The proposed new apportionment will give it only 37.3% of the Assembly seats and 36.8% of the seats in the Senate. Thus, the effect of both the present and proposed apportionments is to reduce the representation to which New York City is entitled on the basis of its population by about 19% in the Assembly and the Senate.*

Under the present apportionment of the Assembly, the most populous assembly district has a population of 167,226 (one district in Onondaga County); the least populous is the district comprising Schuyler County, with a population of 14,066. The average population per district in the Assembly is 94,689. The 26 least populous one-assemblyman counties each has a population of less than 55,000.

In the pending apportionment of the Assembly, Schuyler County will continue as the least populous district with 14,974, the most populous will be one district in Suffolk County with 216,704, and the average population per district will be 108,272. Despite the population-per-district increase of almost 14,000 in the ten years from 1950 to 1960, the 26 least populous one-assemblyman counties all

---

* A 1950 study conducted under the auspices of the New York State Joint Legislative Committee on Reapportionment concluded that: "The cities, particularly the City of New York, do not have equitable representation in either House" and that the present method of obtaining the ratio for apportioning senators is "unfair to urban districts." See *Preliminary Report to the Joint Legislative Committee on Reapportionment*, N. Y. Legis. Doc. (1950) No. 31, at 44 and 12. The study also describes as an "inequity" the 1943 apportionment of the Senate, under which New York City with 53.5% of the state's population received only 44.6% of the senate seats. *Id.* at 53, 55, fn. 84.

show a population of less than 57,000 each in the 1960 census.

For the Senate, the range in the present apportionment is from the 39th District (Essex, Saratoga and Warren Counties) with a population of 146,666, to Bronx County's four districts, each averaging 344,545, as compared to the state-wide average of 244,887 per district.

In the apportionment based on the 1960 census, Nassau County will have three districts, each with a population averaging 425,267, as compared with the probable least populous district—again the Essex, Saratoga and Warren County district—with a population of 166,715.* The state-wide average will be 284,926 per senate district.

As the above figures show, the present apportionment has resulted, and the pending apportionment based on the 1960 census will result, in a substantial impairment of the votes of the majority in *both* the Assembly and the Senate. This impairment has been effected by means of discriminatory geographic classification resulting from the method of apportionment prescribed by the New York State constitution.

The opinions below do not discuss these figures, except that the opinion of Judge Levet repeats the misleading statistics about New York City which appear in his prior opinion, see opinion below, p. 4; *WMCA* v. *Simon*, 202 F. Supp. 741, 749 (S.D.N.Y.), *judgment vacated and case remanded*, 370 U. S. 190 (1962), and which were attacked in

* In making an apportionment the legislature is required to follow the rules for doing so prescribed in the state constitution. While the legislature has some discretion in drawing senate district lines for multi-county districts, it is probable that the present least populous multi-county district will not be affected.

the City's brief on the prior appeal. See Brief of Abe Stark, et al., *WMCA* v. *Simon*, No. 836, October Term, 1961, pp. 4-5.

As there pointed out, the fallacy consists in comparing the City's present representation in the Senate and Assembly, which is based on the 1950 census, with its population as determined in the 1960 census, on the basis of which its representation will be substantially reduced in both the Senate and Assembly as soon as the new apportionment is enacted.

The question whether a *per se* violation of the Equal Protection Clause is established by proof that a state's method of legislative apportionment results in a substantial impairment of the voting power of the majority in both houses of the legislature is of fundamental importance. *Baker* v. *Carr*, 369 U. S. 186 (1962), clearly implies more than that the claim of the Tennessee voters is justiciable, especially in view of this Court's subsequent actions in *Scholle* v. *Hare*, 369 U. S. 429 (1962), and *WMCA* v. *Simon*, *supra*. *Baker* v. *Carr* lays down a rule of substantive constitutional law to guide and limit the states in apportioning their legislatures. That rule, to have any substantive meaning, should treat as a *per se* violation a situation such as that existing in New York State, where the majority is substantially under-represented in both the Senate and Assembly. If the minority were allowed to justify the continuation of such a situation on any ground, the door would be open to nullify the practical significance of *Baker* v. *Carr*. Procedurally, through protracted litigation, if not substantively, the exception of justification would prove to be as broad as the rule itself. A rule which tolerates dis-

crimination in favor of the minority in both houses of a state legislature is no rule at all.

There is virtually no limit to the variety of arguments that can be advanced concerning the alleged special problems and interests of the less-populated areas and the danger of their being dominated by the population centers. The opinions below offer a number of examples:

> "Economic and social matters, extensive resources and their developments, roads, school systems, welfare and other matters emphasize the necessity of some geographic consideration in a state of the size and character of New York."
>
> (Opinion below, p. 23)

One in particular deserves comment. In his opinion Judge Levet states:

> "The six counties in which plaintiffs reside contain 56.2% of the citizen population of the State, but these counties comprise only 3.1% of the area of the State. *Bronx, Kings, New York and Queens are the smallest counties in the State.*"
>
> (Emphasis added; *id.* p. 22)

Judge Ryan's concurring opinion echoes this statistic: "If apportionment were based solely on population, this would mean that 3% of the State's area would dominate the rest of New York" (*id.* p. 27). Apart from the general invalidity of this type of reasoning, see Jurisdictional Statement, pp. 15-20, this particular conclusion is untenable. It overlooks the obvious: that at least in the case of the four named counties of New York City, one reason why each has so small an area is precisely that when the boundaries of each county were determined, the area contained within its boundaries had so large a population.

All such arguments noted in the opinions below in support of discrimination against the majority apparently were developed as a matter of judicial notice, since defendants offered no proof.

Decisions of other courts since *Baker* v. *Carr* support the conclusion that where the majority is under-represented in both houses a *per se* violation of the Equal Protection Clause exists. See *Toombs* v. *Fortson*, 205 F. Supp. 248, 257 (N.D. Ga. 1962);* *Baker* v. *Carr*, 206 F. Supp. 341, 349 (M.D. Tenn. 1962).**

The City submits that it would be incongruous, and unfair to the majority of the people of the State of New York, the most populous state in the Union, if the decision of the court below were permitted to give Constitutional sanction to the New York method of apportionment, through the failure of this Court to note probable jurisdiction of this appeal.

The Question of Irrationality

Another question of importance presented by this appeal is whether under *Baker* v. *Carr* a method of legislative apportionment is rational simply because the discrimination against the voting power of the majority is intentional

---

* "Granting the plaintiffs' petition for declaratory judgment, we determine and hold that so long as the Legislature of the state of Georgia does not have at least one house elected by the people of the State apportioned to population, it fails to meet constitutional requirements."

** "We find in the context of this case that equal protection requires that * * * apportionment in at least one house shall be based, fully and in good faith, on numbers of qualified voters without regard to any other factor."

rather than accidental—the result of a discernible pattern rather than a "crazy quilt", the type of apportionment which happened to be present in *Baker* v. *Carr*. The reasons why *Baker* v. *Carr* should not be construed so narrowly are outlined in the Jurisdictional Statement at pp. 9-11. If a "crazy quilt" pattern of discrimination is invalid, *a fortiori* a purposeful and intentional plan of discrimination which accomplishes the same result, must be invalid. However, even if elements of irrationality must be found in the New York method of apportionment to invalidate it under the Equal Protection Clause, such elements exist. For example:

(a) It is irrational to continue to apply in 1962 a method of legislative apportionment devised in 1894—68 years ago—when it produces the results outlined above: a substantial impairment of the majority's voting power in both houses of the legislature. The population of New York State has increased from less than 6 million in 1894 to over 16 million in 1960. In recent years dramatic population shifts have taken place in New York State and are still taking place: large numbers of people are moving into the suburban communities surrounding the major cities; at the same time the population drift away from the rural areas is continuing. Moreover, the constitution of 1894 was adopted before the advent of many important improvements in transportation and communication.

(b) One of the two most discriminatory provisions with respect to apportionment of the Senate is irrational in that its impact is completely unpredictable, although the target originally intended is clear. The provision is the one barring an additional senator to any county which has three

senators, unless such county has a full (constitutional) ratio for each senator.* Unlike other counties, a county in this category (one which has 6% or more of the total population of the state) cannot receive an additional senator for any remainder in population which is less than a full ratio, however large this remainder may be. The intended target of this provision in 1894 was two counties only: the two heavily populated counties of New York City—Kings (Brooklyn) and New York (Manhattan). However, this group now also includes Queens and Bronx Counties in New York City, Erie County upstate and, for the first time, Nassau County, which will be added in the pending apportionment based on the 1960 census. It is impossible to determine in advance which county in the group, if any, will suffer from this provision in a particular apportionment. In the 1953 apportionment, Bronx County alone was denied an additional senator by this provision. It had an unrepresented remainder of 241,905 and consequently its four senate districts had by far the largest population per district of any in the state. Each Bronx County district had a population of about 344,545—greater than the entire population of Onondaga County (334,453), which received *two* senators.

In the pending apportionment based on the 1960 census, the blow will fall on Nassau, New York and Kings, with the result that in effect over 800,000 residents of those counties will not be counted in the apportionment of senate seats and, for example, the three senate districts of Nassau County will each have a population of about 425,267, as against the state-wide average of 284,926 per district.

---

* A constitutional ratio is determined by dividing the total population by 50, the number of senators in the apportionment of 1894. N. Y. Const., Art. III, §4, par. 2.

By contrast, Monroe County will receive *the same* number of senators as Nassau, although Monroe's population of 571,029 is *less than half* that of Nassau (1,275,801).

(c) The other major discriminatory provision with respect to apportionment of the Senate is that which requires that the total number of senators must be increased to the extent that any county having three or more full-ratio senators becomes entitled to an additional senator. N. Y. Const., Art. III, §4, par. 3. This is an irrational provision, for the arithmetic result is that the comparative voting power of these counties *decreases* as their share of the state's population *increases*, and conversely, the voting power of the counties with less than 6% of the state's population *increases* as their share of the state's population *decreases*.

(d) The effect of the provision in the New York constitution requiring an automatic increase in the number of senators whenever a county having three or more full-ratio senators qualifies for an additional senator has been aggravated by the decision of the New York Court of Appeals in *Matter of Fay*, 291 N. Y. 198 (1943), upholding a senate apportionment in which no *reduction* in the total number of senators was made when a county in this category (New York) lost a senator, and consequently became entitled to a smaller number of senators than it had in the 1894 apportionment. Thus, as the population continues to shift away from the only two counties (Kings and New York) which had three full senate ratios in 1894, the senators lost to those counties remain in the total to be apportioned, and further inflate the representation of the counties which have less than 6% of the population.

(e) The apportionment of assembly seats among senatorial districts produces irrational results caused by the provision in the New York constitution which requires that:

> "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly districts shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require."
>
> N. Y. Const., Art. III, § 5, par. 4.

In substance, the New York constitution prohibits the simple expedient of drawing assembly district lines within a county so as to create districts of equal population, without regard to the senate district lines within the county. As a result of this provision, in the 1953 apportionment the counties of Kings, New York, Queens, Erie and Onondaga contain assembly districts which vary substantially in population. In the case of Onondaga, two of its assembly districts have a population of about 83,613 each, while one assembly district has the same boundaries as one of the senate districts in Onondaga County, which gives it a population of 167,226, double that of each of the other two assembly districts and by far the most populous assembly district in the state. The population discrepancy among assembly districts in the same county averaged about 50,000 for the other counties affected by this provision in the 1953 apportionment.

In the pending apportionment based on the 1960 census, this provision results in creation of assembly districts of unequal population in seven counties—Nassau, Bronx, Erie, Queens, Kings, Monroe and Suffolk—with some assembly districts having enormous populations ranging from 142,000 to 217,000—far above the state-wide average of 108,000. Monroe and Suffolk represent the extreme oddities. Each county will have one assembly district with the same boundaries as a senate district and containing twice the population of each of the other four assembly districts—merely because 5, the number of assemblymen each will have, is not divisible by 3, the number of its senators. Suffolk's giant assembly district will have a population of 216,704, the most populous in the state, followed by Monroe's giant district (190,343). In the other counties affected by this provision, the range of population variation between assembly districts in the same county will be 34,000-60,000.

(f) A final irrational rule is contained in the provisions prescribing the method of apportioning assembly seats. Assemblymen are first apportioned one to each of the state's 61 counties (Fulton and Hamilton being treated as one), without regard to the population of the county. The balance of the assemblymen are then apportioned on the basis of population, after compliance with an arbitrary rule. See N. Y. Const., Art. III, § 5, par. 2. This rule requires that each county which has between one and one-half and two assembly ratios—an assembly ratio being the population of the state divided by 150, the number of assemblymen—shall receive two assemblymen. This rule originally was intended to benefit the 13 counties which were in this category in 1894.* It is an anachronism today.

---

*3 New York State Constitutional Convention (1894), Revised Record 1900, 1031-32.

In the 1953 apportionment four counties received an extra assemblyman under this rule:

County	*Population*
Broome	181,496
Niagara	184,161
Orange	148,429
Richmond	185,032

By contrast, four one-assemblyman counties just failed to obtain an extra assemblyman. These four were:

County	*Population*
Chautauqua	133,159
Dutchess	131,969
Rensselaer	129,995
Schenectady	139,304

The award of an extra assemblyman to the first four counties and not to the other four counties is a completely arbitrary result, and irrational as well, since at the same time 26 other counties each received one assemblyman, although none of them had a population of over 55,000, and the state-wide average per district was 94,689.

In the pending apportionment based on the 1960 census, only three counties will receive the bonus of an extra assemblyman:

County	*Population*
Broome	209,598
Dutchess	171,396
Orange	179,874

and four one-assemblyman counties will not, although they are well above the state-wide average (108,272):

County	*Population*
Chautauqua	143,832
Rensselaer	140,933
Rockland	131,834
Schenectady	150,688

Yet 26 other one-assemblyman counties will have a population of less than 57,000 each.

In short, there are numerous instances of irrational rules in the New York method of apportionment, and in fact irrationality permeates the whole system. The only "rationality" which exists in the New York method of apportionment is that the total effect of these various rules is to produce a substantial discrimination against the majority and in favor of the minority—in *both* houses of the legislature and on *every* apportionment.

CONCLUSION

This appeal presents substantial questions under the Equal Protection Clause and should be heard.

Respectfully submitted,

LEO A. LARKIN,
Corporation Counsel of the City of New York
Attorney for Paul R. Screvane, et al., Appellees

GEORGE H. P. DWIGHT,
BENJAMIN OFFNER,
of Counsel

October 10, 1962.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 26 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 20

W.M.C.A., INC., ET AL.,

Appellants,

v.

CAROLINE K. SIMON, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

MOTION TO DISMISS OR AFFIRM

FRANCIS J. MORGAN,
County Attorney and
Attorney for Appellee,
Leonard Berman,
Office & P. O. Address:
County Office Building,
White Plains, New York

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

W.M.C.A., INC., *et al.*,

Appellants,

v.

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Appellee, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, pursuant to Rule 16 of the Revised Rules of this Court, moves to dismiss the appeal or affirm the judgment in the above entitled case upon all the grounds as are fully set forth in the same motions being made herein by the appellees, CAROLINE K. SIMON, Secretary of State of the State of New York, and LOUIS J. LEFKOWITZ, Attorney General of the State of New York.

Statement

This appellee, LEONARD BERMAN, asks leave that the respective grounds, arguments, points, authorities and citations set forth in the motions to dismiss or affirm made

herein by the appellees above mentioned be considered as though the same were recited herein in full, and that the same be treated by this Court as the said appellee's motion to dismiss or affirm pursuant to Rule 16 of the Revised Rules of this Court.

The theme "one man—one vote" as a basic principle of legislative apportionment is not supported by any constitutional guaranties. The fallacy of such principle lies in the fact that a constitutional apportionment thereunder immediately becomes unconstitutional whenever there are shifts or changes in population. Under this equal-population's doctrine, malapportionment would become a daily and constant occurrence.

Plenary consideration should not be granted herein, for it affirmatively appears on the record that appellants have wholly failed to prove facts establishing the allegations of unconstitutionality set forth in the complaint. Accordingly, there is no substantial federal question presented to the Court.

Conclusion

We respectfully submit that the decision of the District Court is correct and that the appeal should be dismissed or the order and judgment of the District Court dismissing the complaint on the merits should be affirmed.

Respectfully submitted,

FRANCIS J. MORGAN,
County Attorney and
Attorney for Appellee,
Leonard Berman,
Office & P. O. Address:
County Office Building,
White Plains, New York.

Dated: October 24, 1962.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 26 1962
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1962

No. 20

W.M.C.A. INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Appellants,

against

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Appellees
Attorney General and Secretary of State
80 Centre Street
New York 13, N. Y.

IRVING GALT
Assistant Solicitor General

SHELDON RAAB
Deputy Assistant Attorney General
of Counsel.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y. — BOwling Green 9-8153

INDEX

	PAGE
Statutes Involved	2
Statement of the Case	3
Prior Proceedings	5
Proceedings Below	5
Opinions Below	6
Argument	8
Conclusion	22

CASES

Baker v. Carr, 369 U. S. 186 (1962)	5, 8, 11, 12, 13, 14, 18, 21
Caesar v. Williams, 371 P. 2d 241 (Idaho, 1962)	19
Carmichael v. Southern Coal Co., 301 U. S. 495 (1937)	21
Colegrove v. Green, 328 U. S. 549 (1946)	11
Everson v. Board of Education, 330 U. S. 1 (1947)	21
Frank v. Maryland, 359 U. S. 360 (1959)	19
General American Tank Car Corp. v. Day, 270 U. S. 367 (1926)	21
Kotch v. Board of Pilot Comm'rs, 330 U. S. 552 (1947)	20
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911)	13
MacDougall v. Green, 335 U. S. 281 (1948)	8, 11, 12
Maryland Comm. for Fair Representation v. Tawes, 228 Md. 412, 180 A. 2d 656 (1962)	20

PAGE

Maryland Comm. for Fair Representation v. Tawes, 31 U.S.L. Week 2155 (Md., Sept. 25, 1962) 20

McGowan v. Maryland, 366 U. S. 420 (1961) 20

Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580 (1935) 14

Morey v. Doud, 354 U. S. 457 (1957) 13, 14

Sobel v. Adams, No. 182-62-M-Civil-DD (S. D. Fla., Sept. 5, 1962) 19

United States v. Classic, 313 U. S. 299 (1941) 21

United States v. Saylor, 322 U. S. 385 (1944) 21

Wisconsin v. Zimmerman, Civil Action No. 3540 (W. D. Wis., Aug. 6, 1962) (memorandum decision of Special Master), *approved*, Aug. 24, 1962 20

W.M.C.A. v. Simon, 202 F. Supp. 741 (1962) 5

W.M.C.A. v. Simon, 370 U. S. 190 (1962) 5

CONSTITUTIONAL AND STATUTORY PROVISIONS

NEW YORK STATE CONSTITUTION

Article III 2, 21
Article IX 15
Article XIX 4, 9

28 U.S.C. § 1343 3

42 U.S.C. § 1983 3

New York County Law 15

Briefs

PAGE

Amicus Brief for the United States, *Baker* v. *Carr*.. 18

Jurisdictional Statement, *W.M.C.A.* v. *Simon* ..4, 6, 7, 8, 14, 19, 20, 22

Brief of Paul R. Screvane, et al., *W.M.C.A.* v. *Simon*..17, 21

Books and Pamphlets

David and Eisenberg, Devaluation of the Urban and Suburban Vote (1961) 19

Lewis, One Man—One Vote (1962) 22

Revised Record of the Constitutional Convention of 1894 (1900) 15, 17, 18

Newspaper

New York Times 5

Article

Lewis, "Legislative Apportionment and the Federal Courts," 71 Harv. L. Rev. 1057 (1958) 15

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

W.M.C.A. INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY,

Appellants,

against

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO DISMISS OR AFFIRM

Appellees Attorney General and Secretary of State, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the final judgment

of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument, or, in the alternative, that this appeal be dismissed.

Statutes Involved

The relevant state constitutional and statutory provisions are set forth in Appendix B of appellants' jurisdictional statement. We summarize them here briefly for the convenience of the Court.

The system for apportioning seats in both the State Senate and Assembly, is contained in N. Y. Const. art. III, §§ 2-5. While more than one Senate or Assembly District can be contained within the whole of a single county, and while a given Senate district may consist of more than one county, no county border line can be broken in the formation of either type of district.

The total number of Assemblymen is fixed at 150, with every county except Hamilton (which shares one Assemblyman with Fulton County) entitled to one Assemblyman. Sixty-one seats are thus accounted for. The remaining 89 seats, however, are apportioned in this manner: The citizen population of the State is divided by the total number of Assemblymen, and the quotient thus achieved becomes the "ratio." Every county whose citizen population equals 1½ times the "ratio" is entitled to a second Assemblyman. The rest of the seats are then apportioned among those counties with citizen populations greater than twice the "ratio." Seats apportioned on remainders are apportioned in order of highest remainders, with the proviso that no county shall have more Assemblymen than a county with a larger citizen population.

The Senate districts are created primarily on the basis of citizen population. A "ratio" is determined by dividing the citizen population of the State by 50 (the number

of Senators); Senate districts are then formed by combining or dividing counties so that each district contains approximately this number (the "ratio") of citizens. The Constitution provides that each district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact a form as practicable. There are four further provisos: When any county is entitled to more than three Senators, the Senate is enlarged from its minimum size (50) by the number of these additional Senators; no county can have four or more Senators unless it has a full population ratio for each; no county shall have more than one third of all the Senators; and no two counties that are adjoining or separated by one public waterway shall have more than half of all the Senators. (The last two of these provisos are inoperative, since no counties are entitled to that number of Senators.)

The most recent redistricting pursuant to these provisions went into effect in 1954.

Statement of the Case

This is a class action for declaratory judgment and injunctive relief brought under 28 U.S.C. § 1343 and 42 U.S.C. § 1983 by the six individual appellants—residents of four of New York City's counties (Bronx, Kings, New York, Queens; the fifth, Richmond, is not represented), and of neighboring Nassau and Suffolk Counties—and W.M.C.A., Inc., a New York corporation. Appellees are officials of State and local government who perform duties relating to election of state legislative representatives, in accordance with the State statutes. The complaint alleged (par. 12) that the formula contained in the State Constitution for apportioning legislative seats (Congressional districting is not here challenged) violates the Fourteenth Amendment because it results in a "grossly unfair weighting of both houses in the State legislature in favor of the lesser populated rural areas of the State to the great

disadvantage of the densely populated urban centers of the State."

According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the total citizen population of the State. They are represented by 72 Assemblymen and 28 Senators—48.0% of the Assembly and 48.3% of the Senate. When the legislature reapportions the State on the basis of the 1960 census figures, these same counties will have 26 Senate seats and 69 Assembly seats, 45.6% and 46.0%, respectively, of the two houses.

The ten most heavily populated counties in the State (Kings, Queens, New York, Bronx, Nassau, Erie, Westchester, Suffolk, Monroe and Onondaga) have, under the current apportionment, 38 Senate seats, 65.5% of all the Senate, and 93 Assembly seats, 62.0% of all the Assembly; when the Legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 Senate seats and 93 Assembly seats, 64.9% and 61.3%, respectively, of the two houses. They have a citizen population of 11,937,406—73.5% of the total citizen population of the State.

Appellants claim (Jurisd. Statement, p. 8) that these statistics prove that New York "has deliberately chosen to create two classes of voters—rural and urban residents—and to assure, by virtue of a complex and arbitrary apportionment formula embodied in the state constitution—the political dominance of the rural class in both houses of the legislature."

The challenged formula was adopted in 1894 by a majority vote of the people of the State, pursuant to N. Y. Const. art. XIX, § 2. Under this provision, the People vote every twentieth year whether to call a constitutional convention; if a convention is called and amendments are proposed, the People are given an opportunity to vote on these proposals at an election held within six weeks

after the convention adjourns. In 1915 and 1938, the People rejected proposals by their constitutional conventions to amend the apportionment formula; and in 1916 and 1957, they voted against holding a constitutional convention. The 1957 rejection of a constitutional convention bears particular analysis because the issues were clear cut. Governor Harriman had urged that the People vote for a convention to revise the Constitution. He stated that the most urgent constitutional reform needed was "to elect one house of the legislature on the basis of population to give big cities fuller representation." New York Times, Sept. 7, 1957, p. 1, col. 8. See *id.*, Sept. 24, 1957, p. 29, col. 1; Oct. 29, 1957, p. 22, col. 5. Reapportionment was squarely at issue; yet the voters of New York rejected a convention by a vote of 1,368,063 to 1,242,568.

Prior Proceedings

The three-judge District Court, prior to this Court's decision in *Baker* v. *Carr*, 369 U. S. 186 (1962), unanimously granted appellees' motions to dismiss the complaint. 202 F. Supp. 741 (1962). On appeal, this Court held that the "well-established practice of a remand for consideration in the light of a subsequent decision" applied. 370 U. S. 190, 191 (1962). It therefore vacated the judgment of the District Court and remanded the case for reconsideration in light of the *Baker* decision, noting that "the court below should be the first to consider the merits of the federal constitutional claim, free from any doubts as to its justiciability and as to the merits of alleged arbitrary and invidious geographical discrimination." *Ibid.*

Proceedings Below

On remand, the District Court ordered appellees to answer or otherwise move with respect to the complaint by July 30th, and set the case down for hearing on August

1st. Appellees Simon, Lefkowitz, Berman and Leonard filed answers denying the material allegations of unconstitutionality. The remaining parties defendant, officials of New York City and Nassau County, admitted the allegations of the complaint and aligned themselves with appellants' position.

At the hearing, appellants introduced both oral testimony and documentary evidence as to the arithmetical application of the apportionment formula. They also offered to show (Jurisd. Statement, p. 6) that the apportionment formula was "specifically designed and intended' to curtail the representation of urban residents, that the "malapportioned" legislature discriminated against urban residents in allocating tax revenues and distributing benefits, and that a "consensus of expert opinion" holds that population is the only fair criterion for apportionment. These offers of proof were rejected by the Court. Both sides introduced a stipulation (R. 520-36) containing population statistics and the results of past, current and projected apportionments.

Opinions Below

After considering the evidence the three-judge District Court unanimously dismissed the complaint on the merits, holding that appellants failed to meet the burden of showing invidious discrimination.

Judge LEVET wrote the principal opinion of the Court. He first pointed out that New York's apportionment formula is far from arbitrary. New York gives primary weight to population (Jurisd. Statement, p. 16a) in both houses of the legislature. It departs from a strict population standard only in that (1) it guarantees each county at least one assemblyman (as does the Federal formula for apportioning members of the House of Representatives to the states), (2) it provides that densely populated counties,

already having three or more senators, may gain additional senators only on a full ratio, and (3) it provides that such additional senators are added to the total membership of the Senate so that they need not be taken from the less densely populated counties. Second, Judge LEVET noted the historic significance and importance of county government in New York and the emphasis in past apportionment formulas on preserving county representation in the legislature. He concluded that the present formula is "fitted to the nature of the governmental development of the Empire State" (Jurisd. Statement, p. 21a). Third, he emphasized that a majority of the People had refused to change this formula. In fact, they refused to convene a constitutional convention—in which the urban majority would have been in overwhelming control—despite the fact that advocates of a new apportionment system, including the then-governor of the State, urged them to do so. Fourth, Judge LEVET pointed out that the ten most populous counties in the State control both houses of the legislature; and he warned that senate and assembly districts, already oversized in the sparsely populated areas, would grow so large that there would be virtually no contact between legislator and constituent unless a strict population standard could be tempered by geographical considerations. Finally, he noted that a court must be especially conscious of traditional presumptions of constitutionality when it is dealing with basic provisions of a state constitution. He concluded, in light of these observations, that New York's legislative apportionment is free from constitutional taint.

Judges RYAN and WATERMAN concurred in Judge LEVET's findings and conclusions. Judge RYAN also wrote a separate opinion, in which he observed that the electorate could change the present system by convening a constitutional convention—but chose not to do so. He emphasized that although it is clear that the equal protection clause does not prevent a state from giving some con-

sideration to factors such as the interests of counties, geography, and concentration of political power, "all that plaintiffs have illustrated is that the apportionment is not based solely on population" (Jurisd. Statement, p. 26a).

Argument

Appellants claim that this appeal raises substantial questions for three reasons. First, they assert that the state here "has deliberately chosen to create two classes of voters—rural and urban residents—and to assure, by virtue of a complex and arbitrary apportionment formula embodied in the state constitution—the political dominance of the rural class in both houses of the legislature" (Jurisd. Statement, p. 8). Second, they maintain that "this case squarely presents the question whether a state may adopt a policy pursuant to which population is not controlling in determining the apportionment of either house of the state legislature" (Jurisd. Statement, p. 9). Finally, they argue that the District Court erroneously excluded their offers to prove that the delegates to the 1894 constitutional convention "intentionally" discriminated against urban residents, that the legislature unfairly allocates state taxes and revenues as a result of the alleged malapportionment, and that most "scholars" believe that the only legitimate basis of representation in a state legislature is population.

We submit that the District Court's decision, resolving each of these questions in favor of appellees, was correct beyond any doubt and that appellants' position is simply untenable. The first question—the allegation of rural dominance of the legislature—is belied by the very statistics on which appellants rest their case. The second—appellants' reliance on population as the sole test of apportionment—has been reduced to settled principle by *MacDougall* v. *Green*, 335 U. S. 281 (1948), whose validity was most recently reiterated in *Baker* v. *Carr*, 369 U. S.

186 (1962), and by every other relevant decision of this Court defining the scope of the equal protection clause. The third question—relating to the rejection of appellants' offer of proof—is utterly frivolous and flies in the face of existing law and reason.

(A)

Appellants have used many high-sounding phrases to indicate that the urban areas of the State have been injured by the New York apportionment formula. In fact, the entire basis of their action (Complaint, par. 12) is the claim that there is a "grossly unfair weighting of both houses of the State legislature in favor of the less populated rural areas of the State to the great disadvantage of the densely populated urban centers of the State." Their jurisdictional statement (p. 8) contains a remarkable reference to the "political dominance" of rural areas and an even more astonishing allusion to the "inability of the politically dominant rural minority to fully understand the problems of the urban majority." At a minimum, one would expect appellants to demonstrate that the urban areas of the State are unable to exert their political power in the legislature or that they are foreclosed from any opportunity to change the constitutional formula itself. Yet, the figures clearly demonstrate that the urban areas of New York State are now and will continue to be in effective control of the legislature. Moreover, the large urban majorities have had an ample opportunity to assemble a constitutional convention (N. Y. Const. art. XIX, § 2) to repeal the present apportionment formula and to substitute another formula; this they have repeatedly refused to do.

The urban counties—supposedly the victims of a pattern of discrimination—control the legislature. It is indeed a feeble pattern of discrimination that results in the "victim" being able to out-vote the "oppressor." But that is exactly what the statistics show. We reiterate them:

the ten most heavily populated counties in the State, have, under the current apportionment, 38 Senate seats, 65.5% of all the Senate, and 93 Assembly seats, 62.0% of all the Assembly; when the Legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 Senate seats and 93 Assembly seats, 64.9% and 61.3%, respectively, of the two houses.

Appellants failed to show why counties represented by almost two-thirds of the State Legislature are the victims of "a grossly unfair weighting" to the "gross disadvantage of the densely populated urban centers." To do so, they must resort to a strictly arithmetical standard; we submit that such a standard is utterly unworkable and has been rejected by a century of equal protection decisions.

Before we turn to appellants' flirtations with mathematical exactitude, we wish to emphasize again that urban residents not only control the legislature but they also control the machinery for changing the apportionment formula itself. Since 1894, when the People adopted this formula, they have refused repeatedly to alter it. In 1915 and 1938, they rejected proposals to amend the formula; in 1916 and 1957, they voted not to convene a constitutional convention. We have already pointed out that this formula was squarely at issue in the 1957 election.

The essence of appellants' complaint is that urban residents are underrepresented in the legislature, and therefore are unable to assert their political power in the councils of the State. Yet, even if the majority were suppressed in the legislature—and the facts demonstrate that it is not—it was hardly suppressed in the 1957 election. According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780 or 56.2% of the total state population. The 10 most heavily populated counties—presumably those most heavily discriminated against—had a population of 11,937,406 or 73.5% of the citizen population of the State. Thus, the

majority had every opportunity to convene a constitutional convention; and it chose not to do so.

One can hardly complain that the urban majorities have been deprived of political power by a state constitution when these majorities are able to assert their political weight at the polls to amend that constitution. The availability of a political remedy negates plaintiffs' complaint that they have been deprived of equal protection of the laws and, in any event, it relieves the "compelling circumstances" calling for the intervention of federal equity power. *Baker* v. *Carr, supra* at 233; *Colegrove* v. *Green*, 328 U. S. 549, 565, 566, note 6 (RUTLEDGE, J., concurring) (1946). This Court recognized in *Baker* that the federal courts should intervene in this delicate area only where the majority of the people of the State have no practical opportunity for asserting their political weight at the polls. 369 U. S. at 251, 258-59 (CLARK, J., concurring); see *id.* at 193 n. 14.

Significantly, appellants themselves felt compelled to allege (Complaint, par. 20) that they had no political remedy. That allegation is completely contrary to fact.

(B)

As we have already observed, appellants must resort to a strict population standard in order to prevail; in no other way can they establish that New York's minimal variations from this single standard constitutes an invidious discrimination against the more populous counties. We submit that the equal protection clause makes no such demands on the states.

If there was ever any doubt that previous cases had decided—on the merits—that a state may "assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses" (*MacDougall* v. *Green*, 335 U. S. 281, 284 [1948]) by grant-

ing the small counties somewhat greater representation in the state legislature than they would have if population were the only criterion for apportionment, this Court dispelled that doubt in its *Baker* opinion. That opinion (369 U. S. at 203) pointed out that *MacDougall* v. *Green, supra,* affirmed on the merits Illinois' right to require that nominees for state-wide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties.

In *MacDougall,* this Court stated that (335 U. S. at 283-84):

> "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange, indeed, and doctrinaire, for this court, applying such broad Constitutional concepts as due process and equal protection of the laws, to deny a state the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

This Court, in *Baker,* made it crystal clear that population is not the only criterion for apportionment. In fact, although the Court took great pains to avoid discussing the merits of the *Baker* complaint (369 U. S. at 197), five justices nevertheless pointed out that it was appropriate for a state to use factors other than population in apportioning its legislature. 369 U. S. at 244-45, 258, 266, 279, 323, 334, 336, 341.

These opinions merely echo the long standing rules that surround the equal protection clause.* Appellants' approach stands in sharp contrast with the classic statement of the Court on the scope of the equal protection clause, found in *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 (1911), lately re-emphasized in *Morey* v. *Doud*, 354 U. S. 457, 463-64 (1957):

> "The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these:
>
> 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest

---

* The term "invidious discrimination" is nothing more than a shorthand way of describing the kind of arbitrary classification which violates the equal protection clause. It has a well established meaning in the history of the equal protection clause. See *Baker* v. *Carr*, *supra* at 244-45 (DOUGLAS, J., concurring).

upon any reasonable basis, but is essentially arbitrary."

What else but "mathematical nicety" is required by plaintiffs' contention that malapportionment is a function only of population figures? As we noted above, the six counties represented by the six individual plaintiffs have 56.2% of the total citizen population of the State and are represented by 48.0% of the Assembly and 48.3% of the Senate; when the legislature is reapportioned on the basis of 1960 census figures, they will have 45.6% and 46.0%, respectively, of the two houses.

In a variation of their basic theme, appellants argue (Jurisd. Statement, p. 11) that the burden of justifying apportionment falls on appellees upon mere statistical demonstration of a disparity between New York's apportionment system and a system based solely upon population. This is completely erroneous. Appellants' burden under the equal protection clause is to show that New York's formula "does not rest upon any reasonable basis, but is essentially arbitrary." *Morey* v. *Doud, supra* at 464. See *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584 (1935). There is no doubt but that factors other than population constitute ingredients of a reasonable apportionment system—and there is no reason at all to shift the burden of proof to defendants just because there is some variation between a pure population standard and the New York formula. Appellants' theory proves too much; under it, they would likewise succeed in making a prima facie case on the barest statistical showing in virtually every state of the union. See *Baker* v. *Carr, supra*, 369 U. S. at 319 (FRANKFURTER, J., dissenting). For almost every state departs from a strict population standard—and for very good reasons too. There is no reason to suspect unconstitutionality from a commonplace.

We do not contend that the New York formula for apportioning legislators is now or ever was intended to be

based solely upon the population standard. It is obvious to even the most casual observer that the formula combines the population factor with three other basic criteria—all of which plaintiff must show to be irrational. We shall discuss each of these criteria briefly.

1. *Community of Interest.* New York State is composed of 62 counties, each of which plays an important part in the State government. See N.Y. Const. art. IX; County Law, *passim.* This role is increasing in importance. See County Law Art. 6-A. Each of the county's functions brings it into intimate contact with the legislature. To effectively perform its functions, the county needs a representative in the legislature who can represent its interests and bring its needs to the attention of the entire body. See Lewis, "Legislative Apportionment and the Federal Courts," 71 Harv. L. Rev. 1057 n. 3. The extremely irregular population density in New York State makes it particularly necessary that each county be given one representative. Otherwise, the less densely populated counties would be grouped together in multi-county districts in which the legislator's function as a liaison between the county and state government would virtually disappear.

The provision of the New York apportionment formula which most obviously meets this need is that which guarantees at least one assemblyman to each county. However, the two major provisions dealing with senatorial apportionment, the "full ratio rule" and the provision for enlarging the Senate, also tend towards this goal, since they allow many of the less populated counties to have their own senator and restrict the size of multi-county senatorial districts.

This rationale represents a deeply felt need both now and at the time of the 1894 Constitutional Convention; it is by no means a litigator's after-thought. See, *e.g.*, *Re-*

vised Record of the Constitutional Convention of 1894, vol. 3, pp. 1223-26 (1900).

2. *Geographical Considerations.* The six counties in which plaintiffs in this lawsuit reside contain 56.2% of the citizen population of the State, but they constitute only 3.1% of its area. Four of them—Bronx, Kings, New York, and Queens—make up, along with Richmond (not involved in this suit) New York City; these are the smallest counties in this State. The other two, Nassau and Suffolk, are part of New York City's metropolitan area. Nassau has the ninth smallest area of the State's 62 counties. Suffolk, alone of the six counties here represented, has a fairly large area; its "under-representation" in the Legislature is explained not only by its identification with the metropolitan area but also by its sudden population growth—from 1950 to 1960, its population went up 141% as compared with a population rise of 13.2% for the State as a whole (Figures from decennial census of 1950 and 1960).

It is obvious that the assemblyman from St. Lawrence County, which covers 2,767 square miles, an area larger than the State of Delaware, although he represents comparatively few people, represents a constituency that spans an extremely large geographical area; and the senator from the 40th Senatorial District, which includes St. Lawrence as well as Clinton and Franklin Counties, represents an area totalling 5,511 square miles, larger than the State of Connecticut. If a strict population standard were adopted in either house, it would necessitate one of two courses of events, neither of which is conducive to a representative democracy—either the Legislature would grow so large that effective discussion would come to a standstill, or the districts would grow so large as to make the legislator and his constituents inaccessible to one another.

Again, all three of the major provisions* of the apportionment formula here attacked are an attempt to satisfy the need for geographical distribution of legislators. Although the provision which most directly meets this is the provision for enlarging the Senate, the other provisions of course also tend in that direction. And this is no accident; by 1894, the Constitutional Convention already heard complaints that the area of a rural Senate District had become so large that a senator could not properly represent all of the people of his district. *Revised Record, op. cit.*, pp. 1210-11. Accessibility was then and continues to be a vital factor in effective democracy. Unfortunately, it is one which appellants completely ignore.

3. *Anti-Concentration.* One of the strongest advocates of the *Baker* decision, the Solicitor General of the United States, has pointed out that:

> "Constitutional statecraft often involves a degree of protection for minorities which limits the principle of majority rule. Perfect numerical equality in voting rights would be achieved if an entire State legislature were elected at large but the danger is too great that the remote and less populated sections would be neglected or that, in the event of a conflict between two

---

*In addition to the three basic provisions of the New York formula here discussed, other minor features relating solely to the Assembly are raised in the brief filed in support of appellants' position (pp. 14-17) by the New York City officials. These points are not covered by the pleadings or by the record. In any event, the points are unsubstantial. The provision requiring assembly districts to be contained within senate districts is an obviously justifiable attempt to curb gerrymandering by local authorities (who draw assembly district lines) and also to coordinate the constituencies of the two houses. The provision giving a second assemblyman to counties having over 1½ times the "ratio" allows a fairly populous county—with not quite two ratios—to gain greater representation than the very sparsely populated counties which have one assemblyman but which may fall far short of achieving one full ratio.

parts of the State, the more populous region would elect the entire legislature and in its councils the minority would never be heard.

"Due recognition of geographic and other minority interests is also a comprehensible reason for reducing the weight of votes in great cities. If seventy percent of a State's population lived in a single city and the remainder was scattered over wide country areas and small towns, it might be reasonable to give the city voters somewhat smaller representation than that to which they would be entitled by a strictly numerical apportionment in order to reduce the danger of total neglect of the needs and wishes of rural areas." Amicus Brief for the United States, *Baker* v. *Carr*, pp. 29-30.

The Constitutional Convention, in its address to the People, frankly noted its concern over this problem—one which is particularly felt in New York State, where the six counties represented by the six individual plaintiffs in this lawsuit constitute a single metropolitan area. It asked:

"What will be the consequence of compelling the vast region from the city of New York to St. Lawrence and to Lake Erie, with its varied interests, sentiments and opinions not over well understood by the inhabitants of the city, to submit to such domination? Would such an arrangement conduce to the permanent welfare of the State?" *Revised Record, op. cit.*, vol. 4, p. 1255.

It noted, too, that "the advantage is still greatly on the side of the city as against the country districts on account of their small territory, and the fact that all of their representatives stand for the entire city." *Ibid.*

This is no idle fear. The interests of the upstate counties may in some instances be opposed to that of the New York City metropolitan area. Or, more often, their vital inter-

ests may be of little concern to the residents of the City's metropolitan area. What of the remaining 97% of the State's area? Again, effective democracy requires a pragmatic approach, not an "all or nothing" standard; the New York formula, particularly the "full ratio" provision, attempts to supply the necessay flexibility to meet the threat of undue concentration of power.

These three basic considerations—and many others—have been met by the New York apportionment formula. Their existence has prompted the People of the State to retain this formula in their constitution since 1894. Although appellants argue (Jurisd. Statement, pp. 12-13) that the historic significance of these provisions is of no moment, there is substantial authority to the contrary. See, *e.g.*, *Frank* v. *Maryland*, 359 U. S. 360, 370-71 (1959). In any event, the longevity of the formula at least demonstrates that it is responsive to basic needs in New York, and is not a sinister product of an anti-urban cabal, as appellants intimate.

It is to be noted, too, that each of these three basic considerations apply to both houses of a bicameral legislature. If it is rational to have one house based mainly upon population and a second house based completely upon other considerations, as in the Federal model, it is equally rational to combine both factors in each of the two houses —and it is *a fortiori* rational to base both houses mainly upon population with slight variations to take account of other interests. New York follows the last of these alternatives. Although appellants suggest that some of the post-*Baker* lower court decisions conflict with this view (Jurisd. Statement, p. 9), all of the cited cases concern apportionments which diverge from a population standard far more widely than does New York. See DAVID AND EISENBERG, DEVALUATION OF THE URBAN AND SUBURBAN VOTE 5 (1961). In fact, the existing case law on apportionment amply supports our position. See *Sobel* v. *Adams*, No. 182-62-M-Civil-DD (S. D. Fla., Sept. 5, 1962); *Caesar* v.

Williams, 371 P. 2d 241 (Idaho, 1962); *Maryland Comm. for Fair Representation* v. *Tawes*, 31 U.S.L. Week 2155 (Md., Sept. 25, 1962);* *Wisconsin* v. *Zimmerman*, Civil Action No. 3540 (W. D. Wis., Aug. 6, 1962) (memorandum opinion of Special Master), *approved*, Aug. 24, 1962. And, most important, every relevant equal protection decision by this Court cries out against the "mathematical nicety" and lack of flexibility inherent in appellants' argument.

(C)

Appellants also object to the Districts Court's rejection of their offers of proof. These offers fall into three categories; we shall examine them seriatim.

First, they offered to show that the delegates to the 1894 constitutional convention "intentionally" discriminated against urban voters because (Jurisd. Statement, p. 12) they thought such voters "were inferior and unworthy of an equal voice in state government." It is strange, indeed, that appellants feel compelled to psychoanalyze the motives and beliefs of the 1894 Constitutional Convention. This unsupported foray into legislative motive—attempting to taint the Convention with a kind of legislative *mens rea*—imagines a single "motive" for a large deliberative body; and that imagination is completely without support in reality and in law. See *McGowan* v. *Maryland*, 366 U. S. 420, 425-26, 468-69 (1961); *Kotch* v. *Board of Pilot Comm'rs*, 330 U. S. 552 (1947). Even more fundamental to this case, an inquiry into legislative motive is hardly necessary. We do not contend that the New York apportionment formula was intended to be based solely upon a population standard; the carefully

---

* The prior case of this name, decided in April and reported at 228 Md. 412, 180 A. 2d 656 (1962), does not—contrary to appellants' assertion—support their view. It holds only that there must be a "reasonable relation" to population in one house of a bicameral legislature. 180 A. 2d at 668.

prepared provisions of N. Y. Const. art. III §§ 2-5, are by no means an accident. Appellants' offer was both incompetent and irrelevant, and it properly was excluded.

Second, they offered to show that the legislature, as a result of its claimed pro-rural bias, discriminated against the urban areas in imposing taxes and in distributing revenues.* This offer, too, was properly excluded. One need not attack the history of state legislation in order to establish his standing to assert a claim of invidiously discriminatory legislative apportionment. *Baker* v. *Carr, supra,* held that citizens have a "plain, direct, and adequate interest in maintaining the effectiveness of their votes." 369 U. S. at 208. See *United States* v. *Classic,* 313 U. S. 299 (1941); *United States* v. *Saylor,* 322 U. S. 385 (1944). And it adds nothing to plaintiffs' case to launch a wholesale attack on the wisdom of past legislation. If a legislature passes an unconstitutional act, one need not claim malapportionment in order to strike down the act; on the other hand, if the legislature acts constitutionally, one cannot show malapportionment by asserting his grievances at the legislature's actions. Appellants' reliance on footnote 15 of the *Baker* decision is somewhat tenuous; if anything, the Court there indicated grave doubt as to whether the taxation arguments "could add anything however presented," and it left the question open only because it did not have to reach it. Moreover, it has long been established that the Constitution does not regulate the allocation of taxes or revenues among a state's subdivisions. *General American Tank Car Corp.* v. *Day,* 270 U. S. 367, 372 (1926); *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495, 521-23 (1937); *Everson* v. *Board of Education,* 330 U. S. 1, 5-8 (1947).

---

* The New York City officials made a similar offer. Their contention (Br., p. 2 fn.) that their allegations were broader in this respect are not borne out by the record. See transcript, p. 42.

Finally, appellants offered to prove that a "consensus" of scholarly opinion (Jurisd. Statement, p. 22) supports the view that population is the only legitimate criterion to be used in legislative apportionment. Obviously, the "legitimacy" of any apportionment under the equal protection clause is a question for the Courts; they alone are "experts" on constitutional law. It is interesting to note, however, that a "consensus" has yet to be reached. The very pamphlet filed with this Court by appellants—LEWIS, ONE MAN—ONE VOTE (1962)—contains a brilliant dissent by Professor Alfred de Grazia which points out (especially at point 1) the fallacies underlying appellants' theories.

CONCLUSION

This appeal presents no substantial question. The United States District Court correctly determined the issues on the merits in accord with *Baker* v. *Carr* and other relevant decisions of this Court. Therefore, the judgment should be affirmed or the appeal dismissed.

Dated: New York, N. Y., October 23, 1962.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-Appellees
Attorney General and Secretary
of State

IRVING GALT
Assistant Solicitor General

SHELDON RAAB
Deputy Assistant Attorney General,
of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 30 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1962

No. 30

W. M. C. A., Inc., R. Peter Straus, Joseph De Maio, Edward Lind, S. Thomas Delaney, Edward C. Brown, James J. McCafferty,

Appellants,

against

Caroline K. Simon, Secretary of State of the State of New York; Louis J. Lefkowitz, Attorney General of the State of New York; Paul R. Screvane, President of the City Council of the City of New York; Eugene H. Nickerson, Chairman, Board of Supervisors, Nassau County; Leonard Berman, Chairman, Board of Supervisors, Westchester County; Arthur Cromarty, Chairman, Board of Supervisors, Suffolk County; Denis J. Mahon, James Power, John R. Crews, Thomas Mallee, Commissioners, Board of Elections, New York City,

Appellees.

On Appeal From the United States District Court for the Southern District of New York

MEMORANDUM OF EUGENE H. NICKERSON, APPELLEE

Bertram Harnett,
County Attorney of Nassau County,
Attorney for Appellee,
Eugene H. Nickerson,
Nassau County Executive Building,
Mineola, New York.

Loder Appeal Press, Inc., 41 Vesey Street, New York, N. Y. WOrth 2-0689

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

W. M. C. A., INC., *et al.*,

Appellants.

AGAINST

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MEMORANDUM OF EUGENE H. NICKERSON, APPELLEE

This memorandum is submitted by the appellee Eugene H. Nickerson, Chairman of the Board of Supervisors of the County of Nassau, in support of appellants' jurisdictional statement filed September 26, 1962. The position of this appellee has supported appellants' position from the time of submission of the previous appeal to this Court. The answer submitted by this appellee admitted the allegations of the complaint. At the hearing held by the court below on August 1, 1962, appellee actively supported appellants' position. For the purposes of this

memorandum, this appellee requests the Court's permission to refer to himself as "Nassau".

The purpose of this memorandum is to reaffirm the facts and law as set forth in the jurisdictional statement. Nassau endorses them as complete and accurate. Nassau supports the arguments therein as encompassing the entire questions which await consideration by this Court. Nassau, therefore, supports the request for jurisdiction and for the reversal of the lower court's rulings which rejected the appellants' case.

Examination of the record of the hearing held by the lower court on August 1, 1962, clearly shows discrimination against the people of Nassau. The only questions permitted at that time were Nassau counsel's questions showing the disproportionment in value of vote, relegating the voter of Nassau County to the depreciated position where his vote is worth 1/20th of the vote of a voter from Schuyler County, New York.

Nassau requests this Court to take jurisdiction of this case since the existing New York State Constitution should be held invalid and unconstitutional in the light of the Fourteenth Amendment of the United States Constitution as discriminating against voters of the populous areas in New York. We join appellants and the City of New York in this view.

The substantial questions exist, in conflict with opinions of the various Circuit Courts of Appeal and fully set forth in the jurisdictional statement. The importance of the issues are clear, this Court clearly acknowledging this in the decision of *Baker* v. *Carr*, 369 U. S. 186 (1962).

CONCLUSION

This appeal presents substantial questions. It is submitted that the Court has jurisdiction and the appeal should be heard.

Respectfully submitted,

BERTRAM HARNETT,
County Attorney of Nassau County,
Attorney for Appellee,
Eugene H. Nickerson.

DOUGLAS P. NULL,
Senior Deputy County Attorney,
Of Counsel.

October 26, 1962

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 13 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 19~~62~~

No. ~~[illegible]~~ 80

WMCA, INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY,

Appellants,

v.

CAROLINE K. SIMON, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' REPLY TO MOTION TO DISMISS OR AFFIRM

LEONARD B. SAND,
ROBINSON, SILVERMAN, PEARCE & ARONSOHN,
230 Park Avenue,
New York 17, N. Y.

MAX GROSS,
Concourse Plaza Hotel,
Bronx 51, N. Y.
Attorneys for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 460

WMCA, Inc., *et al.*,

Appellants,

v.

Caroline K. Simon, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANTS' REPLY TO MOTION TO DISMISS OR AFFIRM

Appellees' Attorney General and Secretary of State have filed a Motion to Dismiss or Affirm which cavalierly disposes of the obvious conflict between the decision below and the decisions in other cases, some of which are currently pending before this Court, with the single inaccurate statement that "all of the cited cases concern apportionments which diverge from a population standard far more widely than does New York" (Motion, p. 19).

In New York, the malapportionment infects both houses of the legislature, whereas both the Maryland (*Maryland Committee for Fair Representation* v. *Tawes*, No. 554,

Oct. Term 1962) and Michigan (*Beadle* v. *Scholle*, No. 517, Oct. Term 1962) cases relate only to the upper houses of the legislatures, the lower houses being concededly apportioned on the basis of population. Appellees' assertion, therefore, is entirely inaccurate.

Appellees devote the major portion of their Motion to statistical legerdemain at the same time asserting that Appellants' objections are matters of "mathematical nicety" (Motion, p. 14). The thrust of Appellants' case is not, however, directed at the admitted fact that apportionment in New York is not exactly proportionate to population but is rather directed at the fact that the variations are consistently and heavily in one direction to the end that six populous counties receive a far smaller proportion of the legislative seats than their numbers would otherwise entitle them to. The variations are neither minor nor accidental and never operate in favor of the most heavily populated counties. Appellants' objection, therefore, is not based upon "mathematical nicety" but rather on a consistent pattern of discrimination as a result of which there is a constantly worsening devaluation of the political representation of residents of these counties.

We have heretofore (J. St., p. 15, fn. 9) pointed to the invalidity of comparisons based upon the ten most populous counties, which comparisons Appellees persist in making. If reapportionment is carried out under the present formula, the six full-ratio counties (Kings, Queens, New York, Bronx, Nassau and Erie) having 59% of the population will get 48% of the Assembly seats and 46% of the Senate seats. Thus, a clear majority; almost three-fifths of the state population, will be represented by a minority in both houses of the legislature.

Even if one uses the ten counties selected on some basis of classification deemed relevant by Appellees, these counties will get 65% of the Senate seats and 61% of the Assembly seats, as Appellees correctly noted (Motion, p. 10). But, these counties have 74% of the citizen population. The mere fact that they will have more than a majority of the seats does not mean that they are not under-represented.

Moreover, it is unrealistic to attempt any statistical analysis of the malapportionment of this state without recognizing the fact that malapportionment has had a decisive effect in reducing the extent to which the distribution of seats in the legislature reflects the distribution of votes for the political parties on a state-wide basis. As a not accidental consequence of the malapportionment of New York, one finds that the following occurs:

In the 1960 Senatorial election, 48.9% of the votes were cast for candidates of the Republican party but 56.9% of the Senate seats went to candidates of that party. In the 1958 Senate election, 49.7% of the votes went to Republican candidates, but 58.6% of the Senate seats went to candidates of that party. In the 1960 election for the Assembly, 48.2% of the votes were cast for Republican candidates but ~~56.4%~~ 56.0% of the seats went to candidates of that party. In the 1958 Assembly election, 49.8% of the votes were cast for Republican candidates but 61.3% of the seats went to candidates of that party.[1]

It is a fact of political life in New York that, as a consequence of the formula contained in the State Constitu-

1. See, *The Politics of Reapportionment*, The Atherton Press, Chapter 13, "New York: Constitutionally Republican" by Gus Tyler and David J. Wells.

tion, one political party has been able to perpetuate its political control of the state even though its candidates frequently receive a minority of the votes.

In the recently published study, "State Legislative Redistricting"[2], Professors Paul T. David and Ralph Eisenberg state (at page 17) that, in their opinion, in a legislature where less than 45% of the population have the power to elect the majority in one house of the legislature "it can be suspected there is substantial room for improvement in achieving reasonable equality of representation in the districting plan".

As noted in our Jurisdictional Statement (pp. 16-17), if a reapportionment were carried out under the existing constitutional formula Assemblymen representing 37.5% of the citizens would constitute a majority in the Assembly and Senators representing no more than 38.1% of the citizens would constitute a majority in the Senate. Obviously, these variations go beyond the realm of "mathematical nicety".

Appellees further state that the people of the state have "refused to convene a constitutional convention—in which the urban majority would have been in overwhelming control—despite the fact that advocates of a new apportionment system, including the then-governor of the State, urged them to do so" (Motion, p. 7). Appellees also assert that the apportionment formula "was squarely at issue in the 1957 election" (Motion, pp. 5, 10).

Under Article XIX, §2 of the New York Constitution, each Senatorial district elects three delegates and fifteen delegates are elected at large to a constitutional conven-

2. Public Administration Service, University of Virginia, September 10, 1962.

tion. Under this formula, if a convention had been approved in 1957, the six most-heavily populated, most under-represented counties, with 59% of the population, would have had 90 convention seats out of 189, or 47% of the total. Even if, in addition, all of the fifteen state-wide delegates had been elected from these counties, they could not possibly have had "overwhelming control".

Moreover, it is incorrect to state that the apportionment formula was "squarely at issue" in the 1957 referendum on a convention. Many issues other than apportionment were placed before the electorate and the referendum itself did not specifically refer to the apportionment issue. While it is true, as the court below noted (J. St., App. A, p. 21) and Appellees have emphasized (Motion, p. 5), that the then Governor urged a favorable vote on the convention to enable apportionment reform, it is also true that a leading political spokesman for the other political party opposed a convention on other grounds. Former Governor Thomas E. Dewey urged defeat of the proposed constitutional convention on the grounds, not that revision was not needed, but that such a convention was an "outmoded, unwieldy instrument" for achieving revision and would "waste" at least $5,000,000. He urged that constitutional reform could better be achieved by means of a commission empowered to propose specific revisions of the constitution[3]. (In fact, after defeat of the referendum calling for a constitutional convention, such a commission was killed by the legislature when it became apparent that suggestions for changing the apportionment formula would be made by that commission) (R. 55-56). Former Governor Dewey also opposed the convention on

3. New York World Telegram and Sun, October 31, 1957, p. 29.

the grounds that it would have been used to promote annexation to New York City of Nassau and Westchester counties and to raise the limits on real estate taxes. In this regard, it is interesting to note that Nassau county, despite its severe under-representation, voted 57% against holding a convention.[4] It is just as reasonable to assume that the "no" votes in Nassau were motivated by fear of annexation, as it is to assume that they were based upon opposition to apportionment reform.

Appellants reassert the fact that no effective political remedy exists in New York State and respectfully direct this Court's attention to the fact that Appellees have made no attempt to explain why the decision below is not in conflict with that in the *Scholle* case in which relief was granted, despite the availability of initiative and referendum in Michigan, a form of relief unavailable in New York. (See J. St., p. 14.)

Finally, we ask the Court to contrast, on the one hand, Appellees' contention (Motion, p. 21) that the district court properly excluded evidence offered to show that the legislature in fact discriminates against the under-represented areas in allocating tax revenues and distributing benefits, with the position taken, on the other hand, by the petitioner in *Beadle* v. *Scholle*, No. 517, Oct. Term 1962, in which an alleged weakness in that plaintiff's case is said to be the absence of any allegation or showing that the legislature elected pursuant to the there challenged formula had failed to respond adequately to the

4. N. Y. State Legislative Manual 1958, pp. 1077-1078. The six most heavily-populated counties voted 56% in favor of a convention. The ten counties of which Appellees speak voted 53% in favor of a convention.

needs of the urban community (Petition, No. 517, p. 8). Obviously, the positions are in conflict.

CONCLUSION

It is respectfully submitted that this Court should deny Appellees' Motion to Dismiss or Affirm and should note probable jurisdiction of this Appeal.

Respectfully submitted,

LEONARD B. SAND,
ROBINSON, SILVERMAN, PEARCE & ARONSOHN,
MAX GROSS,
Attorneys for Appellants.

November 1962

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 7 1963
JOHN F. DAVIS, CLERK

No. 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

WMCA, Inc., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Appellants,

v.

CAROLINE K. SIMON, Secretary of State of the State of New York, et al.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANTS

LEONARD B. SAND,
Robinson, Silverman, Pearce & Aronsohn,
230 Park Avenue
New York 17, N. Y.

MAX GROSS,
Concourse Plaza Hotel
Bronx 51, New York
Attorneys for Appellants.

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
United States Constitution, Federal Statutes and State Constitution and Statutes Involved	2
Questions Presented	2
Statement	
A) The Complaint	3
B) The Prior Proceedings	5
C) The Opinions Below	6
Summary of Argument	8
ARGUMENT	
I. The Apportionment of the New York State Legislature; The Causes and Extent of Malapportionment in Both Houses of the Legislature	20
A. The History of Apportionment in New York Prior to 1894	21
B. The Present Method of Legislative Apportionment	23
(i) Introduction	23
(ii) The Senate Apportionment Formulae	26
(iii) The Assembly Apportionment Formula	30

PAGE

C. The Nature and Extent of Malapportionment 31

(i) Geographical Discrimination 31

(ii) Irrational "Horizontal" Disparities—The New York Crazy Quilt 37

II. The Provisions Governing the Apportionment of the New York State Legislature are violative of the Fourteenth Amendment 39

a. In General 39

b. *MacDougall* v. *Green* and *Gray* v. *Sanders* 45

c. Apportionment Must be Proportionate to Population 47

d. The Constitutional Provisions for Apportionment of Both Houses of the Legislature Should be Invalidated 49

III. The District Court Did not Rehear and Reconsider in the Manner Contemplated by this Court's Remand 51

(a) The district court erred in placing an undue burden of proof on appellants 52

(b) The district court erred in refusing to consider the purpose and intent of the apportionment provisions and the economic consequences of malapportionment 55

(i) Purpose and intent 55

(ii) Economic consequences of malapportionment; deprivation of due process 63

IV. Appellants Lack any Practical Political Remedy; the Need for Judicial Intervention is as Great Here as in *Baker* v. *Carr* and *Gray* v. *Sanders* 66

CONCLUSION 72

PAGE

APPENDIX A (Statutes) 73

APPENDIX B (Historical Summary of Prior Apportionment Provisions) 125

APPENDIX C (The Constitutional Convention of 1894) 131

CITATIONS

Cases:

Baker v. *Carr*, 369 U. S. 186 ..... 1, 4, 6, 12, 13, 15, 19, 37, 40, 43, 44, 51, 54, 58, 65, 66, 71

Board of Supervisors of La. St. U. etc. v. *Ludley*, 252 F. 2d 372 (5th Cir. 1958) 60

Bolling v. *Sharpe*, 347 U. S. 497 65

Brown v. *Board of Education*, 347 U. S. 483 ..... 22, 60

Carter v. *Carter Coal Co.*, 298 U. S. 238 51

Davis v. *Schnell*, 81 F. Supp. 873 (S.D. Ala. 1949), aff'd, 336 U. S. 933 ..... 17, 58, 59

Davis v. *Synhorst*, 217 F. Supp. 492 (S.D. Iowa 1963) 52

Matter of Dowling, 219 N. Y. 44 (1916) 24

Fairbank v. *United States*, 181 U. S. 283 22

Matter of Fay, 291 N. Y. 198 (1943) 24

Gibson v. *Board of Public Instruction*, 170 F. Supp. 454 (S. D. Fla.) (1958) 54

Giles v. *Harris*, 189 U. S. 475 54

Gomillion v. *Lightfoot*, 364 U. S. 339 ..... 17, 40, 56, 58, 62

Gray v. *Sanders*, 372 U. S. 368 ..... 13, 19, 22, 45, 46, 47, 49, 66, 71

Harrison v. *N.A.A.C.P.*, 360 U. S. 167 59

Lassiter v. *Northampton County Board of Elections*, 360 U. S. 45 ..... 17, 59, 61

Ludley v. *Board of Supervisors of L. S. U.*, 150 F. Supp. 900 (5th Cir. 1957) 60

MacDougall v. *Green*, 335 U. S. 281 ..... 45, 46

PAGE

Moss v. *Burkhart*, 207 F. Supp. 885 (W.D. Okla. 1962) 32, 52, 66

Moss v. *Burkhart*, —— F. Supp. —— (W.D. Okla., July 17, 1963) 47

N.A.A.C.P. v. *Pattey*, 159 F. Supp. 503 (E.D. Va. 1958) *aff'd sub nom, Harrison* v. *N.A.A.C.P.*, 360 U. S. 167 60

Nixon v. *Herndon*, 273 U. S. 536 40

Orleans Parish School v. *Bush*, 242 F. 2d 156 (5th Cir. 1957) 60

Pierce v. *Society of Sisters*, 268 U. S. 510 54

Matter of Reynolds, 202 N. Y. 430 (1911) 24

Scholle v. *Hare*, 367 Mich. 176, *appeal pending*, No. 24, Oct. T. 1963 ..... 51, 65

Matter of Sherrill v. *O'Brien*, 188 N. Y. 185 (1907) 24

Ex parte Siebold, 100 U. S. 371 40

Sincock v. *Duffy*, 215 F. Supp. 169 (Del. 1963), *appeal pending*, No. 307, Oct. T. 1963, *sub nom*, *Roman* v. *Sincock* 15, 32, 47, 49, 51, 52, 55, 65

Skinner v. *Oklahoma*, 316 U. S. 535 53

Smith v. *Allwright*, 321 U. S. 649 40

Soon Hing v. *Crowley*, 113 U. S. 703 56

Thigpen v. *Meyers*, 211 F. Supp. 826 (W. D. Wash. 1962), *appeal pending, sub nom, Meyers* v. *Thigpen*, No. 381, Oct. T. 1963 70

Toombs v. *Fortson*, 205 F. Supp. 248 (N.D. Ga., 1962) 54

United States v. *Carolene Products Co.*, 304 U. S. 144 53

United States v. *Classic*, 313 U. S. 299 40

United States v. *Mosley*, 238 U. S. 383 40

United States v. *Saylor*, 322 U. S. 385 40

Wright v. *Rockefeller*, 211 F. Supp. 460, *appeal pending*, No. 96, Oct. T. 1963, probable jurisdiction noted, 374 U. S. 803 56

WMCA, Inc. v. *Simon*, 370 U. S. 190 51

Yick Wo v. *Hopkins*, 118 U. S. 356 53

Statutes: PAGE

Constitution of the United States:

Fourteenth Amendment 2, 3, 4, 5, 16, 17, 19, 61, 63

Fifteenth Amendment 61

Federal Statutes:

28 U. S. C.

Section 1253 2

Section 1343(3) 2, 3

Section 2201 2

Section 2202 2

42 U. S. C.

Section 1983 ..... 2, 3

Section 1988 ..... 2, 3

Constitution of the State of New York:

Article I

§1 39

Article II

§1 39

Article III

§1 2

§2 ..... 2, 5, 23, 25, 49, 51

§3 ..... 2, 5, 23, 24, 51

§4 ..... 2, 5, 21, 23, 24, 25, 51

§5 ..... 2, 5, 21, 23, 24, 25, 30, 38, 51

Article XIX

§2 ..... 68, 70

§3 68

PAGE

New York State Statutes:

New York State Law:

§120 2

§121 ..... 2, 5

§122 2

§123 ..... 2, 5

§124 2

OTHER AUTHORITIES

Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures, Dec. 1962 ..... 36, 47

Bliven, *The City Boy* v. *The Country Boy*, N. Y. Times Magazine (August 16, 1959) 41

Dauer and Kelsay, *Unrepresentative States*, National Municipal Rev., Dec. 1955 33

David and Eisenberg, *Devaluation of the Urban and Suburban Vote*, Bureau of Public Administration of the University of Virginia, Charlotte, Va. (1961) 33, 35

Dougherty, *Constitutional History of the State of New York* (2d rev. ed. 1915) 125

Ginzberg et al., *The Ineffective Soldier*, (Columbia University Press, 1959) 41

Griffith, *The Rise and Development of the Gerrymander* (1907) 126

Israel, *On Charting a Course Through the Mathematical Quagmire: The Future of Baker* v. *Carr*, 61 Mich. L. Rev. 107 (1962) 58

Lewis, *One Man—One Vote*. The Twentieth Century Fund, September, 1962 40

Lincoln, *The Constitutional History of New York* (1906) 125, 126

PAGE

McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 Mich. L. Rev. 645 (1963) 22, 23, 40, 44

McKay, *Reapportionment and the Federal Analogy* (Natl. Municipal League, Aug. 1962) 49

National Municipal League (2d edition, Jan. 1962), *Compendium on Legislative Apportionment* 33, 34

N. Y. Legis. Man. 1077 (1958) 68

New York State Constitutional Convention Committee Report (1938), Vol. II; Vol. VII 66

New York Times, Nov. 1, 1957, p. 1, col. 1 69

Preliminary Report to the Joint Legislative Committee on Reapportionment, N. Y. Legis. Doc. 3144 (1950) 67

Revised Record of the New York State Constitutional Convention of 1894 63

Schattschneider, *Urbanization and Reapportionment*, 72 Yale L. J. 7 (1962) 42

Silva, *Apportionment in New York*, 30 Ford. L. Rev. 581 (1962) 26, 124, 128

Silva, *Apportionment of the New York Assembly*, 31 Ford. L. Rev. 1 (1962) 26, 124

Taylor, *Civic Virtue Lives in the Country*, Monitor, May 1962 42

The Atherton Press, *The Politics of Reapportionment* 36

Wells, *Legislative Representation in New York State* (published by the I.L.G.W.U., March 1963) 26

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

WMCA, Inc., *et al.*,

Appellants,

v.

Caroline K. Simon, *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLANTS

Opinions Below

The opinion of the three-judge district court dismissing the complaint (R. 294-323) is reported at 208 F. Supp. 368. The prior opinion of that court, also dismissing the complaint (R. 88-113), is reported at 202 F. Supp. 741. The prior opinion of this Court vacating that first judgment of dismissal and remanding the case for reconsideration in the light of *Baker* v. *Carr*, 369 U. S. 186, is reported at 370 U. S. 190.

Jurisdiction

On August 27, 1962, the three-judge district court entered an order and judgment dismissing the complaint which had sought to enjoin various state officials from performing functions in connection with state constitutional and statutory provisions alleged to be in violation of the Fourteenth Amendment to the Constitution of the United States. A notice of appeal to this Court was filed in the district court on August 29, 1962 (R. 325-327). This Court noted probable jurisdiction on June 10, 1963 (R. 328), 374 U. S. 802. Jurisdiction of the Court rests on 28 U. S. C. 1253.

United States Constitution, Federal Statutes and State Constitution and Statutes Involved

The pertinent provisions of the United States Constitution; 42 U. S. C. Sections 1983 and 1988; 28 U. S. C. Sections 1343(3), 2201 and 2202; the Constitution of the State of New York, Art. III, Sections 1-5; and New York State Law, Sections 120-124, are set forth in Appendix A, *infra*, pp. 73-124.

Questions Presented

The legislative apportionment of New York State is determined by a formula contained in the state constitution and implemented by statutes. Application of that formula results, and must necessarily result, in gross and arbitrary disproportions between population and representation in both houses of the legislature and systematically discriminates against residents of the most heavily populated areas of the state.

Appellants sought to show that the apportionment formula was adopted with a deliberate purpose and intent to limit the representation of residents of the most

heavily populated areas of the state and that the resulting discrimination was therefore particularly invidious. Further, appellants offered to prove that as a result of the aforesaid malapportionment, appellants and others similarly situated are victims of economic discrimination and are deprived of due process of law. The district court rejected both offers as tendering irrelevant material. The State offered no evidence to justify the apportionment.

The questions presented are:

1. Whether the district court erred in dismissing the complaint on the ground that appellants had failed to prove that the apportionment is invidiously discriminatory.

2. Whether the district court erred in refusing to consider evidence offered to prove:

(a) that the apportionment formula was intended to discriminate against residents of the most heavily populated areas of the state because they were believed to be unworthy of an equal voice in the state government, where the complaint alleged that the apportionment results from affirmative legislative action violative of the Fourteenth Amendment;

(b) that appellants were denied due process of law because the malapportioned legislature unfairly discriminates against the residents of these underrepresented areas.

Statement

A) The Complaint

This action was brought on May 1, 1961 (R. 1), in the District Court for the Southern District of New York, under the Civil Rights Act, U. S. C., Title 42, §§1983 and 1988, and under U. S. C., Title 28, §1343. The individual

appellants are citizens and voters residing in the counties of New York, Bronx, Kings, Queens, Suffolk and Nassau. The appellant WMCA, Inc. is a New York corporation and a taxpayer having its principal place of business in New York County.[1] The suit is a class action brought on behalf of the named appellants and all other persons, citizens, taxpayers and qualified voters similarly situated (R. 2-3).

The appellees are: the Secretary of State and Attorney General of the State of New York; the Commissioners of the Board of Elections of the City of New York; the Chairman of the Board of Supervisors of Nassau, Westchester and Suffolk Counties and the President of the City Council of the City of New York.[2] The complaint alleged that all of the appellees perform or will be required to perform official functions arising out of the legislative apportionment of the state and the conduct of elections pursuant to such apportionment (R. 3-4).

The complaint alleged that the appellants are denied due process and equal protection of the law as guaranteed to them by the Fourteenth Amendment of the Constitution of the United States, by virtue of the provisions of the New York State Constitution and the statutes in implementation thereof which provide for an apportionment of the State Senate and Assembly in a manner which is discriminatory to the residents of the more populous areas of the state.[3]

1. The district court found it unnecessary to pass on the standing of WMCA, Inc. as a party plaintiff (R. 315).

2. Although nominally appellees, the officials representing the City of New York and Nassau County filed answers admitting the allegations of the complaint and associated themselves with the appellants in this action (R. 87; 116).

3. Although this suit was commenced some ten months prior to this Court's decision in *Baker* v. *Carr*, 369 U. S. 186, the allegations of the first cause of action of the complaint in this case substantially parallel those of the complaint in *Baker* v. *Carr*.

The complaint contained two causes of action, the first of which alleged (R. 1-10) that the formula contained in the state constitution (Art. III, §§ 2-5[4]) currently results in an apportionment which deprives appellants of rights guaranteed by the Fourteenth Amendment. The second cause of action (R. 10-11) alleged that those provisions of the state constitution were invalid and violative of the Fourteenth Amendment at the time of their adoption and that their adoption and the enactment in 1953 of statutes (N. Y. State Law, §§ 121 and 123) apportioning the legislature pursuant to said provisions constituted "affirmative legislative action" which deprived appellants of rights guaranteed by the Fourteenth Amendment.

The relief sought by the complaint (R. 11-12) was that the district court declare, pursuant to 28 U. S. C. § 2201, that Article III, §§ 2-5, of the Constitution of the State of New York; and New York State Law §§ 121 and 123, are void and invalid under the Fourteenth Amendment of the Constitution of the United States; that the appellees be restrained from acting pursuant to said provisions, and that the court retain jurisdiction of the case until the state legislature provides for such apportionment of the state as would insure to the appellants the rights guaranteed them by the Fourteenth Amendment.

B) The Prior Proceedings

On August 1, 1962, after this Court vacated the prior judgment of dismissal (370 U. S. 190), the district court held a hearing (R. 125) at which, at the outset, it rejected as irrelevant appellants' offers to prove that: a) the apportionment formula was specifically designed

4. Subsequent to the filing of this complaint, Art. III, §3 of the state constitution was amended in respects which are immaterial to this litigation. See App. A, *infra*, pp. 75-76, fn.

and intended to curtail the representation of residents of the most heavily populated areas of the state (R. 140, 142, 143-146); b) that the malapportioned legislature in fact discriminated against such residents in allocating tax revenues and distributing benefits (R. 140, 142, 147-148); and c) that a consensus of experts deemed population to be the only fair and equitable basis for apportionment (R. 129, 150).[5] Under these exclusionary rulings of the court, appellants were permitted only to introduce, and did introduce, evidence of the existing apportionment and the apportionment which must necessarily result when the mandatory formula contained in the state constitution is applied to 1960 citizen census figures. The appellees called no witnesses and offered no evidence to justify or rationalize the gross disparities which exist in both the Senate and Assembly between population and representation (R. 182-183; some facts were stipulated, R. 226-242).

C) The Opinions Below

Writing the principal opinion for the court, Richard H. Levet, District Judge, noted that "* * * we are unable to premise an invalidity of the provisions of the State of New York upon the *Baker v. Carr* determination by reason of the absence of applicable indicia" (R. 300). Judge Levet wrote that tests for invidious discrimination have been held to include such matters as rationality of state policy, historical basis, presence or absence of a political remedy, geography "including accessibility of legislative representatives to their electors" and whether the "court

5. The district court began the hearing by announcing its assumption that *no* evidence was to be presented. This was contrary to the assumption and desire of counsel for both the appellants and the State of New York (R. 128).

is called upon to invalidate solemnly enacted State Constitution and laws" (R. 304-305). Examining the New York apportionment by these tests, Judge Levet concluded that "plaintiffs have not shown by a fair preponderance of the relevant evidence that 'invidious discrimination' exists" (R. 314). In a separate concurring opinion, Chief District Judge Sylvester J. Ryan held that it was permissible for a state to base an apportionment on criteria besides population (R. 320-322). Judge Ryan wrote:

> "If apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York. Even if the urban representatives were to sincerely endeavor to care for the interests of the state as a whole, it is unlikely that they might be able to fully understand the problems of the remaining vast areas of the state" (R. 322).

Judge Ryan did not discuss the converse problem, *i.e.*, the inability of the politically dominant rural minority fully to understand the problems of the urban majority, nor did he discuss appellants' rejected offer (R. 140, 142, 147-148) to prove that, in fact, the malapportioned legislature discriminates against such residents. Judge Ryan also agreed with Judge Levet's conclusion (R. 311-312) that a political remedy exists because, under the state constitution, a vote is held every twenty years on the question whether there shall be a constitutional convention. In 1957, a majority of those voting on the question, voted "No" (R. 322).

Circuit Judge Sterry R. Waterman noted his concurrence with the findings of fact and conclusions of law contained in the opinion of Judge Levet (R. 323).

Summary of Argument

I

A. The formulae contained in the New York State Constitution, pursuant to which both houses of the legislature are apportioned, produces and must necessarily produce gross and arbitrary disparities between population and representation. These disparities exist today to an extent never before experienced in the history of the state and, if present population trends continue, will become even more aggravated. New York's malapportionment cannot therefore be excused or tolerated on the basis of "history". Moreover, a complete historical analysis discloses that prior to the adoption of the current apportionment formulae in 1894 it was always a primary consideration that the representative districts should be as equal as possible with respect to the number of voters residing in each such district. Second, history discloses that the concept of one representative per county is not as rigid as defenders of the present system proclaim. Even today it is not applied with respect to Senate representation and with respect to representation of two counties in the Assembly. At other periods in the history of the state both the Senate and Assembly have been apportioned without the assignment of a representative to each county.

In 1894, however, a constitutional convention viewed with alarm the rapid population growth of certain downstate urban areas and adopted an elaborate apportionment plan which embodied a purposeful and systematic scheme of discrimination against residents of such areas. This plan still determines the apportionment of the state legislature.

B. The New York Senate is today apportioned by two different methods, one of which is applicable to counties having six percent or more of the state's citizen population and the other applicable to the balance of the counties. This formula is so contrived that the greater the population of a metropolitan county becomes the more over-represented the less populous counties become. The comparative power of voters in the counties with over six percent of the citizen population *decreases* as those counties' proportionate share of the state population *increases*; the comparative power of voters in the under-six-percent counties *increases* as those counties' proportionate share of the state population *decreases*.

The Assembly apportionment formula is less complex than the one for the Senate but is no less effective in producing rural over-representation. The number of Assembly seats is set at 150 which are assigned as follows: first every county (except one) is given one seat; next every county which has at least one percent of the state's citizen population is given an additional seat; finally all the seats left are divided among those counties which have at least one and a third percent of the state's citizen population. The effect of this process, as in the case of the Senate, is to separate the counties into different groups and to use different procedures for apportioning to each group, thereby automatically producing inequities. The basic inequity arises from the fact that so many seats (61 seats or 41% of the Assembly) are apportioned in the first step, in which population is not a factor at all, that there are not enough remaining to provide the heavily populated counties with a proportionate share.

C. (i) The district court concluded that New York's apportionment did not reveal geographical discrimination

—a conclusion which the court reached: 1) by comparing counties grouped in a manner which has no significance under the state constitution and which arbitrarily includes 4 over-represented counties with 6 under-represented counties discriminated against by the constitution; and 2) by comparing 1960 census figures with the apportionment based on the 1950 census rather than the reduced representation which the most heavily populated counties will receive when the reapportionment formula is applied to the 1960 census figures. In other words, because the legislature has not yet reapportioned on the basis of the current census, as under the state constitution it must do by 1967, and because the population of New York City relative to that of the entire state has declined, a temporary situation exists pursuant to which the discrepancies between that city's population and its representation are considerably less than they will be for the ensuing years following reapportionment.

(ii). The district court did not attempt to measure the extent of malapportionment by any of the various criteria recognized by political scientists and apportionment experts for these purposes. (The court deemed expert opinion on such matters to be entirely irrelevant.) Measuring the apportionment by these criteria reveals that:

(a) If reapportionment were carried out under the existing formulae Assemblymen representing no more than 37% of the citizens would constitute a majority in the Assembly, and Senators representing no more than 38% of the citizens would constitute a majority in the Senate.

(b) If the Assembly were reapportioned under the existing formulae the ratio between the most populous

Assembly district and the least populous such district would be at least 12.7 to 1. It is not possible now to calculate the precise Senate ratio but, because of various mandatory rules in the apportionment formulae, the ratio between the most populous and least populous Senate district cannot be less than 2.5 to 1.

(c) The relative voting power of voters in those New York counties with populations over 500,000, in 1960, was 86% of the state average. In 1960, the average voter in those New York counties with populations of 25,000 or less had a voting power which was 348% of the state average. In only five of all the other 49 states are counties with populations under 25,000 more over-represented than in New York.

(d) In terms of political representativeness, malapportionment has had a decisive effect in reducing the extent to which the distribution of seats in the legislature reflects the distribution of votes for candidates of the political parties on a statewide basis. It is a well known fact, mathematically demonstrable, that malapportionment has made the New York legislature "constitutionally Republican". As a consequence of the apportionment formulae, one political party has been able to perpetuate its majority position in the legislature even though its candidates frequently receive a minority of the votes. In this regard malapportionment effectively frustrates the political wishes of the majority much more severely than it does in those states in which a single party is dominant. Malapportionment causes New York to be a two party state with a one-party legislature.

(iii) Within the wide "verticle disparities" which exist between representation accorded to rural areas and that accorded the most heavily populated areas of the state,

there exist "horizontal disparities" among rural areas themselves as well as among urban areas themselves. New York's "crazy quilt" (*Baker* v. *Carr, supra* at 254) (concurring opinion of Mr. Justice Clark) is as erratic and irrational as the pattern disclosed in Tennessee. For example, within a single upstate county (Onondaga) two of the three Assembly districts each had a 1950 population of 83,613; the remaining Assembly district had a 1950 population of 167,726. These and similar variations are not the result of a rural-urban conflict but are purely the product of arbitrary, irrational and sometimes archaic apportioning and districting rules.

II

Purposeful systematic discrimination with respect to the exercise of the franchise—against a class of citizens fully qualified by the state's own standards to vote—is violative of the equal protection and due process clauses. Disparities between population and representation may result from the absence of any apportionment policy or reflect accidental circumstances such as population shifts without adjusting reapportionments. Such disparities may also result, however, not from accident but from design and reflect the implemented policy of a temporarily politically dominant group to perpetuate its control over the legislature by impairing the effectiveness of the exercise of the franchise by other groups. To a significant extent, New York's apportionment reflects arbitrariness and irrationality in the sense that accidental and unintended variations result from application of the apportionment formulae to the population figures of the state. But the consistent and ever worsening under-representation of the citizens residing in the more heavily populated areas of the state results, not primarily from accident, but from

a purposeful and intended scheme to suppress the voting rights of certain citizens on the basis of their place of residence.

We respectfully submit that affirmative legislative action intended to debase the votes of a class of citizens purely on the basis of place of residence calls even more impellingly for judicial intervention than does malapportionment by inertia—the situation presented in *Baker* v. *Carr, supra*. If this Court affirms the decision below, the result will be that a state cannot discriminate against voters on the basis of geography unless it really intends to do so. If, however, at any time in a state's history any group achieves, even temporarily, political dominance and succeeds in embodying in a constitutional provision a discriminatory apportionment formula explicitly intended to achieve the discriminatory result, the ensuing malapportionment would be immune from judicial challenge. We do not believe that the net result of the reappraisal of our systems of apportioning state legislatures occasioned by this Court's historic decision in *Baker* v. *Carr* will be that the equal protection clause prohibits invidious discrimination by accident, but permits such discrimination by design.

We believe that the full implications of the equal protection clause demand that the apportionment in both houses of the legislature be based on population, and we find support for this proposition in this Court's recent decision in *Gray* v. *Sanders*, 372 U. S. 368.

If within the state as a whole the concept of "one man—one vote" is mandatory, it is difficult to perceive how or why notions of inequality should be tolerated when the state is divided into political subdivisions. If in the election of the governor, everyone's vote must be equal (*Gray* v. *Sanders*)—in the election of the legislature—a

body which collectively constitutes a statewide authority, the same concept should prevail.

Apportionment on a population basis does not mean that all other factors are to be disregarded in determining the composition of the legislature. It does mean—contrary to the holding below—that population must be more than one of many equivalent factors in determining an apportionment. The use of other valid criteria—such as pre-existing political subdivisions—need not, and indeed must not, prevent the resulting districts from being approximately equal in population throughout the state; all other considerations must be subordinate to this requirement.

Mathematical exactitude is not required nor is it always feasible. The law has always recognized a concept of *de minimus*. Variations from population should be tolerated, however, only within a narrow range and only where they result from some rational policy permissible under the Fourteenth Amendment—the burden of justification of the variations resting with the state. The fact that such variations invariably operate to the detriment of one group of voters would make their existence particularly suspect; an explicit intent to deviate from a population base because of antipathy towards one class of citizens would render the apportionment invalid.

We respectfully urge that the requirement of a population base be recognized for both houses of the legislature and that this Court should reject as inapplicable the so-called "federal analogy", said by some to justify apportioning one house on some other basis. However, even if this Court were to accept some version of the "federal analogy", the constitutional provisions for apportionment of both the Senate and Assembly should be invalidated to permit the legislature to determine which house would be

the body to represent population and which house would be apportioned on some other basis. There is no clear dichotomy between the houses of the New York legislature today on this basis. Moreover, the composition of New York's bicameral legislature is a single complex interrelated problem, and, under the doctrine of separability the entire apportionment structure should be invalidated and referred to the legislature for revision. See *Sincock* v. *Duffy*, 215 F. Supp. 169, 188-189 (Del. 1963), *appeal pending*, No. 307, Oct. T. 1963, *sub nom*, *Roman* v. *Sincock*.

III

Following its decision in *Baker* v. *Carr*, this Court remanded this case to the district court (which had previously dismissed the complaint without a hearing) writing:

> "As in *Scholle* v. *Hare*, 369 U. S. 429, we believe that the court below should be the first to consider the merits of the federal constitutional claim, free from any doubts as to its justiciability and as to the merits of alleged arbitrary and invidious geographical discrimination". *WMCA, Inc.* v. *Simon*, 370 U. S. 190, 191.

We submit that this Court intended the burden of showing invidious discrimination to be a meaningful one which was capable of being met in circumstances not limited to the particular facts of the Tennessee case. But the district court did not rehear and reconsider this case in the manner contemplated by this Court's remand. Rather, by virtue of a series of erroneous rulings with respect to the presumption of constitutionality, the relevance of an intent to discriminate and the relevance of actual

economic injury resulting from malapportionment, the district court precluded a thorough inquiry into the constitutionality of New York's apportionment.

(a) The district court held that the appellants had the burden of proving the unconstitutionality of the apportionment provisions which had a presumption of constitutionality made all the stronger by virtue of their inclusion in the state constitution. The court also held that a showing of the extent of malapportionment did not establish either a *prima facie* case which the State must justify or rationalize; or a *per se* violation. These rulings were erroneous. Whatever procedural burdens appellants had, they more than met when the parties stipulated to the apportionment data of the state which disclosed gross disparities from population in both houses. Where basic civil liberties are involved the presumption of constitutionality shifts when a substantial question is raised as to the validity of the action of the state, taken in an area—unlike that of economic regulation—where the state power is not plenary but is severely circumscribed. Nor does inclusion of the apportionment formulae in the state constitution in any wise alter the basic question before the court or impose a greater burden on appellants. State action—be it in the form of a statute or a constitutional provision—or, as here, by both constitutional provision and statutory implementation,—must comply with the Fourteenth Amendment or be invalidated. When, therefore, appellants showed that malapportionment existed to the extent present in New York, they—at a minimum—established a *prima facie* case. Since the State offered no evidence to justify or rationalize the malapportionment, judgment should have been granted for the relief sought in the complaint.

(b) If the apportionment statistics alone were not sufficient to establish a *prima facie* case of invidious discrimination, it is appropriate to consider if any other evidence is relevant to show whether such discrimination exists. Appellants in fact sought to show that the apportionment violated the Fourteenth Amendment on two other grounds —(i) because it reflected intentional discrimination against a class of citizens thought, on the basis of place of residence, to be unworthy of an equal voice in the government of the state and, (ii) because it resulted in actual economic injury to members of that class.

(i) The district court excluded—not only from evidence but from its consideration—evidence that the purpose and intent of the apportionment formula was to discriminate against residents of the most populous areas of the state. In excluding such data as irrelevant the lower court ignored a long line of cases in which federal courts, including this Court, have looked to the "legislative setting" of enactments said to constitute discriminatory violations of civil liberties. See *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45, 53; *Davis* v. *Schnell*, 81 F. Supp. 873, 878 (S. D. Ala. 1949), *aff'd* 336 U. S. 933.

If in fact an intent existed to discriminate against certain residents, the adoption of the apportionment provisions and the statutes implementing them constituted, as alleged in the second cause of action (R. 10-12), affirmative legislative action in violation of appellants' constitutional rights (*cf. Gomillion* v. *Lightfoot*, 364 U. S. 339) —a contention entirely ignored by the district court. Moreover, as we have urged *supra*, if any variations between population and representation may be tolerated under the Fourteenth Amendment, it is surely relevant in determining the extent of the tolerable variations

whether they are the accidental product of an apportionment innocently devised or the calculated result of an intent purposefully and systematically to discriminate against a class of citizens.

Appellants primarily rely, in support of their allegations of an intent to discriminate, on the language and consequences of the apportionment provisions themselves. Reliance is also placed on the legislative history of the apportionment provisions, contained in records which may appropriately be judicially noted (See Appendix C, pp. 131-139). Appellants urge that, if this Court deems it relevant whether an intent existed to discriminate against a class of citizens, this Court should determine in the first instance whether such an intent existed and is manifested in the New York apportionment formulae. Otherwise, in evaluating the state's apportionment such an intent must be assumed to exist since the district court in effect ruled that even if such an intent were present, the apportionment would nevertheless be constitutional. Alternatively, the decision below should be reversed and remanded to the district court with instructions to adjudicate the question whether or not the apportionment is discriminatory in the light of all the facts and circumstances, including its "legislative setting" and the purpose and intent with which it was enacted and is implemented.

(ii) The district court also excluded both from evidence and from its consideration—as irrelevant—proof offered in support of the allegations of the complaint that a deprivation of due process and equal protection exists because the malapportioned legislature unjustly discriminates "against large segments of the population of the state in the allocation of the burdens of taxation and in

the unequal and unjust distribution of funds derived by the state through the exercise of the taxing powers" (Complaint ¶18, R. 9). This allegation and the tendered proof raised questions explicitly left open by this Court in *Baker* v. *Carr*, 369 U. S. at 194-195, fn. 15. We submit that it was error for the district court to deprive appellants of an opportunity to establish by this means both a violation of the due process clause and additional proof of invidious discrimination in violation of the equal protection clause.

Accordingly, if this Court should reject all other contentions of appellants, this case should be remanded to the district court with instructions to admit and consider the evidence excluded at the prior hearing and engage in the searching analysis of all aspects of the New York apportionment, which appellants submit, this Court contemplated when it previously remanded the case to the district court.

IV

Appellants lack any practical political remedy and the need for judicial intervention is as great here as in *Baker* v. *Carr* and *Gray* v. *Sanders*.

Although we do not concede that the existence of a political remedy would render a violation of the Fourteenth Amendment immune from judicial correction, we note that the New York Constitution contains no provisions for initiative and referendum and all efforts to obtain such a provision have been in vain. Constitutional amendments can be initiated only by the malapportioned legislature or by an almost equally malapportioned constitutional convention. A constitutional convention may not be held without the consent of the legislature prior

to 1979. Even if such a convention were held, almost all of the delegates would be elected on the basis of Senate districts; therefore, such a convention would itself be infected by the same malapportionment which obtains in the Senate. The rejection by the voters of a convention call in 1957 cannot be said to reflect a popular acceptance of the present apportionment formula in view of the nature of the question as presented to the voters and the many other issues injected into the campaign. In fact, all efforts to achieve political redress for the long-standing grievances of which appellants complain have failed. We are at the end of the line. Only this Court can restore majority rule to the 17,000,000 inhabitants of New York State.

ARGUMENT

I. The Apportionment of the New York State Legislature; The Causes and Extent of Malapportionment in Both Houses of the Legislature.

The apportionment of both houses of the New York State legislature is determined by a complex and arbitrary formula, embodied in the Constitution, which formula must be applied every ten years to the current census figures to determine the legislative apportionment of the state.

We set forth herein:

(A) the history of apportionment in New York prior to the adoption, in 1894, of the present formula.

(B) the apportionment formula itself and how it operates.

(C) the net results, *i.e.*, the extent and nature of the malapportionment.

A. The History of Apportionment in New York Prior to 1894.

New York State today is malapportioned to a greater extent than at any time in its history. If the state should be reapportioned on the basis of the present formula and the 1960 federal census figures, the extent of malapportionment would substantially increase (Pls. Exs. 1-7; R. 159, 243-249). If present population trends continue the malapportionment will become even more aggravated. Thus, the relevance of past practices here is extremely questionable for disparities such as now exist have never before occurred or been sanctioned in New York. The district court found, however, historic justification for the current malapportionment which it said was "fitted to the nature of the governmental development of the Empire State" (R. 311). We examine the validity of that conclusion in material set forth in Appendix B (*infra*, pp. 125-130) in which the predecessor apportionment formulae are traced and analyzed.

From that analysis, two salient facts emerge. The first is that it was always a primary consideration that the representative districts should be equal (insofar as the relevant districting rules permitted[6]) with respect to the number of the voters residing in each such district. However, under the first three constitutions (and unlike the 1894 constitution which merely pays lip service to this concept of numerical equality[7]), this goal was, to a large

6. Apportionment rules relate to the allocation of representatives to previously described districts. Districting rules relate to the determination of the boundaries for the districts to which such representatives will be allocated.

7. Although the current constitutional apportionment formulæ speak of Senate districts to contain "as nearly as may be an equal number of inhabitants" Art. III, §4, and a like provision exists with respect to the Assembly, Art. III, §5, other provisions of the formulæ effectively preclude realization of these stated objectives. See pp. 25-31, *infra*.

extent achieved. This resulted from the apportionment rules themselves as well as the fact that earlier apportionments were made at a time when there was a more uniform population dispersal throughout the state.

Second, this historical summary discloses that the concept of one representative per county in one house is not as rigid as defenders of the present system proclaim. Even today it is not applied with respect to Senate representation and with respect to representation of Fulton and Hamilton counties in the Assembly. At other periods in our history, both the Senate and Assembly have been apportioned without assignment of a representative to each county. In fact, the rule of one Assemblyman per county did not go into effect until 1821, 44 years after the first constitution.[8]

Thus, in New York State past practice does not justify or excuse gross malapportionment. Nor does history nationally justify or excuse malapportionment in any state.[9]

Finally, although the present formula dates back to 1894, it can hardly be contended after *Brown* v. *Board of Education*, 347 U. S. 483, 492, and *Gray* v. *Sanders*, 372 U. S. 368, that a violation of constitutional rights becomes sanctified merely because of the passage of time during which corrective efforts have been to no avail; *cf. Fairbank* v. *United States*, 181 U. S. 283. "The equal protection clause should be read in the present tense . . ." McKay, *Political Thickets and Crazy Quilts:*

8. See App. B, *infra*, pp. 127-128.

9. Studies made by the National Municipal League disclose that when the Union was formed all but four states created legislatures in which population was given preponderate consideration in both houses. During the first century of our national existence, population equity was the main criterion for apportionment in 30 of the 36 states.

Reapportionment and Equal Protection, 61 MICH. L. REV. 645, 697 (1963).

B. The Present Method of Legislative Apportionment.

(1) *Introduction.*

The tremendous population growth which New York City (then New York and Kings Counties) was experiencing was of great concern to the majority of the delegates to the 1894 Constitutional Convention and led to the adoption of apportionment rules designed to suppress the number of Senators and Assemblymen to be apportioned to heavily populated areas.[10]

We summarize, in this section the specific rules which govern the legislative apportionment of the state, and analyze the extent to which the necessary consequence of these rules is consistent discrimination against the most populous counties of the state.

The legislative power of the State of New York has always been vested in a two-house legislature composed of the Senate and the Assembly.[11] Since adoption of the constitution in 1894, apportionment of the members of the Senate and Assembly has been effected in accordance with rules prescribed in that constitution. See N. Y. Const., Art. III, §§2-5. This method of apportionment

10. See Appendix C *infra* pp. 131-139. The rules designed to limit representation from such areas (*e.g.*, the full ratio rule and the provision for increasing the size of the Senate (see pp. 26-30, *infra*)) are entirely independent of the districting rules to prevent gerrymandering which the convention also adopted. It cannot be doubted that the convention could have dealt with the gerrymandering problem without imposing inequities with respect to urban representation.

11. See App. B, *infra*.

has continued substantially unchanged to the present time.[12]

The 1953 apportionment is now in effect in New York State. Subject to the outcome of this appeal, the New York State constitution requires that a new legislative apportionment be effected before 1967, on the basis of the 1960 federal census figures. In the ten-year period from

12. In 1931, provisions with respect to use of the federal census to determine population were added by amendment to Article III, §§4 and 5. By amendment adopted in 1945, minor substantive changes were made to facilitate the creation of Senate districts and Assembly districts within certain counties. See Article III, §4, Par. 1, §5, Par. 4. In addition to prescribing the method of apportionment, the 1894 constitution itself made an apportionment of the legislature, which was superseded by subsequent apportionment statutes. These obsolete provisions for apportionment of the Assembly were deleted from Article III, §5 by the 1931 amendment. See New York State Constitutional Convention Committee, Vol. II, Amendments Proposed to New York Constitution 1895-1937, pp. 184-187 (1938). The corresponding provisions of Article III, §3, with respect to the 1894 apportionment of the Senate were deleted by the amendment approved in November, 1962. See App. A, *infra*, p. 76n. All apportionments since the apportionment made in the 1894 constitution have been made by statute.

Although the New York constitution has required that an apportionment of the legislature be made once every ten years, see N. Y. Const. Art. III, §4, par. 1, §5, par. 1, the legislature has enacted an effective apportionment statute on only four occasions since 1894: in 1907, 1917, 1943 and 1953. See Laws 1907, c. 727; Laws 1917, c. 798; Laws 1943, c. 359; Laws 1953, c. 893. Apportionment statutes enacted in 1906 and 1916 were held invalid by the New York Court of Appeals as not in compliance with the method of apportionment prescribed in the constitution. See *Matter of Sherrill v. O'Brien*, 188 N. Y. 185 (1907); *Matter of Dowling*, 219 N. Y. 44 (1916). The validity of the apportionment statute enacted in 1907 was challenged in 1911, but the Court of Appeals refused to pass on its constitutionality because of the objector's laches in waiting until after four elections had been held. See *Matter of Reynolds*, 202 N. Y. 430 (1911). The validity of the statute enacted in 1943 was sustained in *Matter of Fay*, 291 N. Y. 198 (1943).

We submit that this record of the inability of the legislature to comply with the terms of the apportionment provisions is itself indicative of the complexity and irrationality of the apportionment formula.

1950 to 1960 the population of New York State increased from 14,203,449 to 16,240,786.[13]

The New York State constitution provides that each Senate district "shall contain as nearly as may be an equal number of inhabitants, excluding aliens," N. Y. Const. Art. III, §4, par. 1, and that the members of the Assembly shall be apportioned among the several counties of the state "as nearly as may be according to the number of their respective inhabitants, excluding aliens." *Id.* §5, par 1.

The county is the basic unit of area for the purpose of apportioning both the Senate and Assembly. No county may be divided in forming a Senate district, except to make two or more districts wholly within the county. *Id.* §4, par. 1. Assemblymen are apportioned by counties, *Id.* §5, the exception being that two upstate counties, Fulton and Hamilton, are treated as a single county in apportioning the Assembly, *Id.* §5. There are 62 counties in the state.

The number of Senators is fixed at not less than 50 and may vary with each apportionment. *Id.* §2, §4, par. 3. In the 1953 apportionment it was 58; in the pending apportionment based on the 1960 census it will be 57. The number of Assemblymen is fixed at 150. Both Senators and Assemblymen are elected for two year terms, in the even-numbered years. *Id.* §2.

The method of apportionment prescribed in the New York State constitution results and has resulted, in a substantial impairment of the voting power of the most populous counties in both the Senate and Assembly and in every apportionment, primarily because the legislature in making an apportionment is required by the constitution to

13. R. 227-229. All population figures used herein refer to citizen population unless otherwise indicated.

apply certain rules the inevitable effect of which is to limit the representation of those counties. We outline below the rules for apportioning the Senate and the Assembly, with emphasis on those rules which limit the representation of the most populous counties.[14]

(ii) *The Senate Apportionment Formulae.*

For Senate apportionment, the counties are divided into two categories: those which have more than 6% of the state's citizen-population and those which have less. Different procedures determine the number of seats apportioned to each group.

The seats are apportioned as follows:

First, the state's citizen-population is divided by 50. The resulting number is called the first ratio. All counties with citizen-populations at least three times this ratio (that is, at least 6% of the state's citizen-population), are assigned seats by comparing their citizen-populations to the first ratio. These counties are referred to as the "first-ratio counties". Counties with citizen-populations between three and four times the ratio receive three seats; those with populations between four and five times the ratio receive four seats, and so on.

Next, the number of seats given each first-ratio county is compared to the number it had in 1894. If any of these counties has more seats than it had in 1894, the total Senate membership is increased by the same number of additional seats. (Thus, if a county that had two seats in 1894 were given seven under a new apportionment, it

14. A more detailed exposition of the operation of these rules will be contained in the brief of the Corporation Counsel of the City of New York (hereinafter referred to as the "City's Brief"). See also Silva, *Apportionment in New York*, 30 FORD. L. REV. 581 (1962); Silva, *Apportionment of The New York Assembly*, 31 FORD. L. REV. 1 (1962); Wells, *Legislative Representation in New York State* (published by the I.L.G.W.U. March, 1963).

would cause Senate membership to increase by five seats over the basic 50.)

After this process is completed, the remaining seats are divided among the counties which have less than 6% of the citizen-population. To apportion these seats, a second ratio is used—obtained by dividing the combined citizen-population of all the under-6% counties by the remaining number of seats (including the newly-created ones). These seats are then distributed on the basis of this second ratio. (The second ratio is not specifically established by the Constitution but is made necessary by its limitations and by subsequent judicial interpretation of the 1894 Constitutional formula.)

If the present formula is again used to reapportion the Senate, the procedure will operate in the following way:

The first ratio will be 324,816. Three times this figure (that is, 6% of the state's citizen-population) is 974,448. There are six counties whose citizen-populations exceed this figure: Kings, Queens, New York, Bronx, Nassau and Erie. These, then, will be the "first-ratio counties". (Nassau will be in this category for the first time.)[14a]

In comparing the number of seats for which each of these counties qualifies to the number it had in 1894, New York and Bronx are considered to be one county since they comprised a single county in 1894. For the same reason, Queens and Nassau Counties are considered together.

The comparison will run as follows:

Both Kings and Erie will have the same number of seats they had in 1894: seven and three respectively. Therefore neither will affect the total number of Senators.

New York and Bronx together had twelve seats in 1894 and will receive four each under a new apportionment—

14a. See Brief of Eugene H. Nickerson, Chairman, Board of Supervisors, Nassau County, Appellee, in support of Appellants, for a detailed analysis of the impact of malapportionment on Nassau County.

a total of eight. Such decreases do not change the total number of Senators, so neither county will affect the size of the Senate.[15]

In 1894, Queens, which then included Nassau, had one seat. Under the new apportionment, Queens will get five and Nassau three—a total of eight. This is an increase of seven over 1894; consequently, seven Senate seats will be added to the basic 50 to produce a 57-member Senate.

The six first-ratio counties, then, will receive a total of 26 Senate seats. Subtracting 26 from 57 will leave 31 additional seats to be divided among the remaining counties on the basis of the second ratio. (The second ratio will be 216,822.)

The 26 Senators from the first-ratio counties will represent 9,519,000 people—59% of the state's citizens; the 31 Senators from the second-ratio counties will represent only 6,721,000 people—41% of the citizens. A minority of the people will thus elect a majority (54%) of the Senators.

There will be 366,000 citizens per Senator in the first-ratio counties; in the second-ratio counties there will be 217,000 per Senator. The system actually sets up a mathematical "double standard" under which the citizens of the first-ratio counties are, in effect treated as "second-class citizens." Their seats will be apportioned on the basis of a Senate of 50 members while the other counties' seats will be distributed on the basis of a Senate of 57 members, thus giving a clear advantage to the latter group. If this "two-ratio system" did not exist, there would not be 31 seats left for the less heavily-populated counties, but only 24.

Each time a first-ratio county becomes entitled to a greater share of the original 50 seats than it had in 1894,

15. For a further discussion of the effect of the rule with respect to such decreases, see City's Brief, p. 28.

the number available for the other counties would have to be reduced if the constitutional machinery did not create extra seats. In this way, the additional seats gained by the heavily-populated counties since 1894 do not result in a corresponding reduction of seats for the smaller counties—this despite the fact that the smaller counties' proportionate share of the state's citizen-population has actually decreased. Population increases by the over-6% counties actually cause the under-6% counties to become more over-represented. Indeed, the complex Senate apportionment formula produces the following rather startling "equations": the comparative power of voters in the first-ratio counties decreases as those counties' proportionate share of the state population increases; the comparative power of voters in the second-ratio counties increases as those counties' proportionate share of the state population decreases.

Although it is the most important one, the two-ratio system is not the only inequity in the Senate apportionment process. Another stems from a requirement that to qualify for additional seats beyond three, counties must have additional full first ratios. This requirement has become known as the "full ratio" rule. There is no similar requirement for second-ratio seats. For example, in the coming reapportionment, Nassau can be given no more than three seats although its citizen-population is just a shade less than four times the first ratio (3.93). By contrast, in the last apportionment, Onondaga, whose citizen-population was just 1.71 times the second ratio, was given two seats, and under a new apportionment, Monroe would be given three seats although its citizen-population is only 2.63 times the second ratio. (Monroe's population is just 1.76 times the first ratio.)

The combined effects of the two-ratio system and the "full ratio" rule in the Senate apportionment system will deprive the first-ratio counties of eight Senate seats. If seats were distributed in direct proportion to each county's citizen-population, these counties would receive 34 seats in a 57-member Senate, but under a new apportionment they would get only 26.

(iii) *The Assembly Apportionment Formula.*

The Constitutional formula for Assembly apportionment is less complex than the one for the Senate but is no less effective in producing urban under-representation.

The number of Assembly seats is set at 150; these are distributed among the counties in the following three-step process:

(1) First, every county (except Hamilton) is given one seat.

(2) Next, every county which has more than one percent of the state's citizen-population is given an additional seat.[16]

(3) Finally, all the seats still left are divided among those counties which have more than one and a third percent of the state's citizen-population.[17]

16. Art. III, §5 speaks of assigning a second Assemblyman to every county having "more than the ratio and one-half over". A ratio is determined by dividing the citizen population of the State by the number of members of the Assembly (150). 1½ times $\frac{\text{population}}{150} = 1\%$ of population.

17. Art. III, §5 speaks of counties having "more than two ratios." Two ratios = 2 times $\frac{\text{population}}{150} = 1\frac{1}{3}\%$ of population. The specific number of Assembly seats assigned to each of those counties whose citizen-populations exceed one and a third percent of the state's citizen-population is determined by a formula under

The effect of this process is to separate the counties into three groups: those with small, medium sized and large populations. The number of seats apportioned to each group is determined by a different step in the procedure and inequities are thereby automatically produced. The basic inequity arises from the fact that because 61 seats (41% of the total number) are apportioned on the first step, without any regard to population, not enough remain to provide the heavily-populated counties with an equitable share.

The inequalities inherent in this system may be gauged from examination of the results it will yield if it is again used to reapportion the Assembly: the heavily-populated urban and suburban counties will receive, on the average, one seat for every 130,000 citizens; the medium-sized "two-Assemblyman counties" will have an average of one seat for every 110,000 citizens; the remaining "one-Assemblyman counties" will average one seat for every 63,000 citizens.

C. The Nature and Extent of Malapportionment.

(i) *Geographical Discrimination.*

The court below concluded that the New York apportionment did not disclose "geographical discrimination" (R. 314). This conclusion was based, in part, on a comparison of counties grouped in a manner which has no significance under the state constitution.

The district court relied upon figures for ten counties. Under the state constitution, the full ratio rule and the rule for expansion of the Senate of which appellants

---

which the total number of seats available to these counties as a group are distributed among them on a reasonably equitable basis. The major inequity in Assembly representation arises from the fact that as a group these counties do not receive a sufficient number of seats to enable them to be equitably represented.

particularly complain (Complaint, ¶13, R. 6), apply only to six counties (R. 172-173). A comparison based on those six counties discloses that the extent of actual malapportionment is much greater than the court's opinion would indicate.[18] The four additional counties reflected in the district court's comparisons will all be over-represented in the Senate.

The court also judicially noted (R. 297, par. 5) figures which compare New York City's 1960 population with its representation based upon the 1950 census, rather than the reduced representation which will result and control for the coming years when the challenged reapportionment formula is applied to the 1960 census figures. In other words, because the legislature has not yet reapportioned on the basis of the current census, as under the state constitution it must do by 1967, and because the population of New York City relative to that of the entire state has declined, a temporary situation exists pursuant to which the discrepancies between the city's proportion of its states' population and its share of the seats are considerably less than they will be for the ensuing years following reapportionment.

The fact of the matter is that, measured by standards which are generally recognized by political scientists for these purposes,[19] New York's apportionment reflects severe geographical discrimination—particularly when it is borne in mind that New York State's total citizen population is more than 16,000,000 and that therefore each percentage point of deviation from representation propor-

18. See Pl.'s Exs. 1-5, R. 159, 243-247.

19. The court below did not deem expert opinion relevant and did not discuss any of these standards (See R. 149-150, 182). With respect to consideration of expert opinion, compare *Sincock* v. *Duffy*, *supra*; *Moss* v. *Burkhart*, 207 F. Supp. 885 (W.D. Okla. 1962).

tionate to population equals at least 160,000 citizens. We analyze the New York apportionment by these recognized criteria:

(a) PERCENTAGE OF POPULATION WHOSE REPRESENTATIVES CONSTITUTE A MAJORITY (calculated by adding the populations of the districts, starting with the least populous, until the number of districts added represents a majority of the members of the house).[20]

When, in 1953, New York was reapportioned on the basis of the 1950 census, Assemblymen representing 37.1 percent of the citizens constituted a majority in the Assembly and Senators representing 40.9 percent of the citizens constituted a majority in the Senate.

If reapportionment were carried out under the existing constitutional formula, Assemblymen representing no more than 37% of the citizens would constitute a majority in the Assembly, and Senators representing no more than 38% of the citizens would constitute a majority in the Senate.

In the study, "State Legislative Redistricting" (Public Administration Service, University of Virginia, September 10, 1962), Professors Paul T. David and Ralph Eisenberg state (at page 17) that, in their opinion, in a legislature where less than 45% of the population have the power to elect the majority in one house of the legislature "it can be suspected there is substantial room for improve-

20. This criterion is discussed and figures for the various states are indicated in Dauer and Kelsay, *Unrepresentative States*, NATIONAL MUNICIPAL REV., Dec. 1955, pp. 571-575 and 587. Corrections appear in the National Municipal Review for April, 1956. See also David and Eisenberg, *Devaluation of the Urban and Suburban Vote*, Bureau of Public Administration of the University of Virginia, (1961). More recent figures appear in the "Compendium on Legislative Apportionment" published by the National Municipal League (2d edition, Jan. 1962).

ment in achieving reasonable equality of representation in the districting plan." The percentages in New York fall far short of this figure and create more than a "suspicion" that improvement is needed.

(b) EXTREMES (expressed as a ratio—the population of the most populous district divided by that of the least populous:)[21]

When, in 1953, the state was reapportioned on the basis of the 1950 census, the most populous Assembly district had 11.9 times as many citizens as the least populous Assembly district and the most populous Senate district had 2.4 times as many citizens as the least populous Senate district.

If the Assembly were reapportioned under the existing constitutional formula, the most populous Assembly district would have at least 12.7 times as many citizens as the least populous Assembly district. (It is not possible now to calculate precisely what the ratio of the population of the most populous Senate district would be to the population of the least populous Senate district if the Senate were reapportioned under the existing constitutional formula, but, because of the various mandatory rules in that formula the ratio can be no less than 2.5 to 1.)

(c) RELATIVE VOTING POWER OF VARIOUS CATEGORIES OF COUNTIES (100% represents the average power of a vote for the entire state, and other figures indicate the variation from this average: Thus, voters, in an under-represented area might have a voting power of, say, 75%; those in an over-represented area might have a voting power of

21. For comparative figures in other states, see, "Compendium on Legislative Apportionment" (2nd edition), and the University of Virginia study. See fn. 20 *supra*.

200%. The figures used are averages for both houses).[22]

(i) Under-Represented (heavily populated) Counties

In 1950, the average voter in those New York counties with populations over 500,000 had a voting power which was 84% of the state average. In 1960, this percentage became 86%.

(ii) Over-Represented (sparsely populated) Counties

In 1950, the average voter in those New York counties with populations of 25,000 or less had a voting power which was 319% of the state average. In 1960, this percentage was 348%.

In only 5 of all the other 49 states are counties with populations under 25,000 more over-represented than in New York. (California, Arizona, Florida, Maryland and New Jersey.) Thus, New York ranks as the sixth worst state in terms of rural over-representation.[23] (Rural over-representation is particularly marked in the Assembly. For example, in the pending apportionment counties in the under-25,000 category which have a combined population of only 79,000 will elect 4 Assemblymen, whereas in Kings County, districts with a combined population of 719,000 will also elect 4 Assemblymen.)

22. The figures contained in this section appear in the University of Virginia study, *op. cit. supra* fn. 20, at p. 50. Comparable figures for the percentages which will result following reapportionment are not available.

23. "All states except New Jersey and Rhode Island display increasing over-representation of rural counties since 1910. In most, the trend has been one of consistently increasing over-representation during the 50-year period. California, Maryland, New York, New Jersey, Pennsylvania, Massachusetts, Florida, Connecticut, and Arizona provide instances of the greatest over-representation following the 1950 census despite any reapportionments. In 1960, before reapportionment or redistricting, the most extreme instances of over-representation existed in California, Arizona, Florida, Maryland, New Jersey, New York, and Pennsylvania * * *." University of Virginia study, *op. cit. supra* fn. 20, at p. 14.

(d) POLITICAL REPRESENTATIVENESS. Finally, it is unrealistic to attempt any statistical analysis of the malapportionment of the New York State legislature without recognizing the fact that malapportionment has had a decisive effect in reducing the extent to which the distribution of seats in the legislature reflects the distribution of votes for the political parties on a state-wide basis.[24] As a not accidental consequence of the malapportionment of New York, one finds that the following occurs:[25]

	SENATE			ASSEMBLY	
Year	% of Votes Cast for Republican Candidates	% of Seats to Republican Candidates	Year	% of Votes Cast for Republican Candidates	% of Seats to Republican Candidates
1962	49.96	56.9	1962	49.8	56.7
1960	48.9	56.9	1960	48.2	56.0
1958	49.7	58.6	1958	49.8	61.3

24. While, as we show *infra* malapportionment in New York State has an impact, which is prejudicial to the Democratic Party, malapportionment nationally cannot be said to favor or prejudice one political party. Thus, it has been said:

> "Taking the States as a whole, it is difficult to determine the overall effect of the present structure on the political composition of State legislatures. It is assumed by many that under-represented cities outside the southern and border States are basically strongholds of the Democratic Party, but that the under-represented suburbs in these States tend to support the Republican Party. In the southern and border states the Republican Party has tended to be strongest in the urban areas. In view of the fact that the urban area population of the nation is divided almost equally between the central city and the suburbs, it is difficult to arrive at any overall national concensus as to the party gaining or suffering most from present apportionment practices". Advisory Commission on Intergovernmental Relations, APPORTIONMENT OF STATE LEGISLATURES, p. 28 (Dec. 1962).

25. See, THE POLITICS OF REAPPORTIONMENT (The Atherton Press), Chapter 13, "New York: 'Constitutionally Republican'" by Gus Tyler and David I. Wells. The phrase "Constitutionally Republican" is attributed to former Governor Alfred E. Smith. See also Wells, *op. cit. supra* p. 26, fn. 14.

In this regard malapportionment effectively frustrates the political wishes of the majority, in New York, much more severely than it does in a state in which a single party is dominant. It is a fact of political life in New York that, as a consequence of the formula contained in the State constitution, one political party has been able to perpetuate its majority position in the legislature even though its candidates frequently receive a minority of the votes. The same party has controlled both houses of the legislature during 59 of the 67 years in which the present apportionment provisions have been in force. Thus, it has been said that New York is a two party state with a one party legislature.[26]

In short, measured by all widely used criteria, New York's apportionment is inequitable and geographically discriminatory. We respectfully submit that the district court's failure to recognize this results solely from its failure to apply to that apportionment recognized criteria for measuring such data.

(ii) *Irrational "Horizontal" Disparities—The New York Crazy Quilt.*

In his concurring opinion in *Baker* v. *Carr*, Mr. Justice Clark described the Tennessee apportionment as a "crazy quilt", stressing the fact that:

> "It [the Tennessee apportionment] discriminates horizontally creating gross disparities between rural areas themselves as well as between urban areas themselves, still maintaining the wide vertical disparity already pointed out between rural and urban." 369 U. S. at 256 (footnote omitted).

Precisely this pattern of broad rural-urban discrimination and of irrational disparity within rural and urban

26. *Ibid* at p. 221.

areas exists in New York. The "quilt" in New York is as "crazy" as in Tennessee.

A detailed analysis of the means by which the various apportionment and districting rules contained in the constitution compel the creation of these irrational disparities is contained in the City's Brief pp. 60-76. So as not to burden the Court with undue repetition, we cite herein but a few examples of clearly irrational disparities.

Onondaga County has three Assembly districts. Two of these had a 1950 population of 83,613 each, while the remaining district had a 1950 population of 167,226, making it by far the most populous Assembly district in the state. This result is compelled by the New York Constitution, Article III, §5, par. 4, which provides that if the Assembly districts cannot be evenly divided among the Senate districts in a county to which such Assembly districts are apportioned, Senate district lines may not be disregarded and the odd Assembly district must be placed in the Senate district having the smallest population. Elsewhere in the state, population variations among Assembly districts *within the same county* affected by this provision averaged about 50,000 in the 1953 apportionment.

In the pending apportionment, this provision will result in creation of Assembly districts of unequal population in seven counties—Bronx, Kings, Queens, Erie, Monroe, Nassau and Suffolk. This will necessitate the existence of one or more Assembly districts in each of these counties with populations as high as from 142,000 to 190,000—far above the state-wide average of 108,000 per district. Monroe County will show the extreme variance. It will have one Assembly district with the same boundaries as a Senate district, with a population of 190,000 which is twice the population of each of its other four Assembly districts—merely because 5, the number of Assemblymen

Monroe will have, is not divisible by 3, the number of its Senators. In the other counties that will be affected by this rule, the range of population variation between Assembly districts in the same county will be 34,000-63,000.

These variations and other examples of arbitrariness discussed in the City's Brief, are entirely within a single county, are not explicable in terms of a rural-urban dichotomy and are purely the product of irrational and sometimes archaic apportioning and districting rules which produce a New York "crazy-quilt".

II. The Provisions Governing the Apportionment of the New York State Legislature are Violative of the Fourteenth Amendment.

a) In General.

Purposeful systematic discrimination with respect to the exercise of the franchise against a class of citizens fully qualified by a state's own standards to vote[27] is viola-

27. N. Y. Const. Art. II, § 1 provides:

"Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, * * *

"Notwithstanding the foregoing provisions after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

N. Y. Const. Art. I, §1 provides:

"No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers, * * *"

tive of the equal protection clause. If such discrimination were based on race or sex, there would be no hesitation in striking down such discrimination under the Fifteenth and Seventeenth Amendments. See, *e.g.*, *Gomillion* v. *Lightfoot*, 364 U. S. 339; *Nixon* v. *Herndon*, 273 U. S. 536; cf. *Smith* v. *Allwright*, 321 U. S. 649. The language of the equal protection clause, designedly couched in the general terms of an organic law,[28] is broad enough to invalidate all invidious discriminations which deprive groups—be they urban residents, redheads or left-handed persons—of the full and free exercise of their basic civil liberties, including the right to vote and the right to have one's vote fully and fairly counted.[29]

We respectfully submit that any apportionment, such as New York's, which has the effect of giving greater weight to the votes cast by persons residing in a particular area of the state than that given to votes cast elsewhere embodies an implicit value judgment that some persons are entitled to a greater influence in government than is proportionate to their numbers. See Lewis, *One Man—One Vote*, The Twentieth Century Fund, September 1962, pp. 3-8.[30]

---

28. See McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645, 663 (1963).

29. "A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, *cf. United States* v. *Classic*, 313 U. S. 299; or by a refusal to count votes from arbitrarily selected precincts, *cf. United States* v. *Mosley*, 238 U. S. 383, or by a stuffing of the ballot box, *cf. Ex parte Siebold*, 100 U. S. 371; *United States* v. *Saylor*, 322 U. S. 385". *Baker* v. *Carr*, 369 U. S. 186, 208.

30. Forty reprints of this statement of the consensus of a symposium of political scientists and other experts in the field of reapportionment were lodged with the Clerk together with the Jurisdictional Statement in this case.

New York's apportionment provisions indeed reflect a value judgment, sometimes made explicit,[31] that persons who resi in urban areas are intellectually and morally inferior and are less qualified to be heard in matters of government than their fellow citizens residing in the rural areas.[32] Regardless of what the basis for the discrimination may be, it is obnoxious to the equal protection clause so to classify citizens for the purpose of exercise of the franchise. The romantic notion that the man who tills the soil is a finer person or a better citizen is nothing more than a romantic notion which cannot be tolerated under our democratic system. Nor is there merit in the contention that rural minorities need protection from urban majorities. Minority groups in our country are protected by laws and by constitutions. They are not protected by making the minority a majority for purposes of voting: for who is to choose which minority is to be so favored and on what basis is that choice to be made?

We submit that the plea for protection of rural minorities is merely another, perhaps more euphemistic way, of expressing the belief in the superiority of the

31. See Appendix C, *infra*, pp. 131-139.

32. There is no scientific or other evidence to support a claim that urban residents are inferior. Indeed a claim might be made, based on objective studies, in support of a contrary position. See, *e.g.*, Dr. Eli Ginzberg *et al.*, THE INEFFECTIVE SOLDIER (New York: Columbia University Press, 1959) based on an analysis of draft board rejections and on case studies of soldiers who collapsed under strain. For a popular summary of such studies, see Bliven, *The City Boy v. The Country Boy*, N. Y. Times Magazine (August 16, 1959), p. 20.

rural resident.[33] As other commentators have noted[34] in those states in which the urban population constitutes a minority, no plea is ever heard to give additional weighting to the votes of the urban minority to protect them against domination by the rural majority.

Equally without merit is the notion that "area" must be represented in the state legislature. Political subdivisions do not cast ballots; acres do not vote. The question is not whether political subdivisions or geographical areas should be represented, but whether individual voters should have a greater say at the ballot box because of their residence. Both Judge Levet writing for the court below (R. 313) and Judge Ryan, in his concurring opinion (R. 321-322), emphasized the fact that the "six plaintiff counties" contain 56.2% of the state's population but only 3.1% of the area of the state, and that if apportionment were based on population this would mean that the majority could be elected by persons residing in 3% of the state's area. However, the nationwide statistics indicate that 70% of the population resides in 1% of the area.[35] Obviously, if the area factor were to be controlling

---

33. For a contemporary expression of this view, see an extension of remarks made by Assemblyman Paul Reed Taylor of Yates County on the floor of the Assembly, published under the title "Civic Virtue Lives in the Country", Monitor, May 1962, pp. 7, 8, 20. Assemblyman Taylor wrote in part:

> "The words communist and countryman are practical antonyms * * *. In contrast to the countryman's stability there is plenty of evidence that the city dweller has limitations on his self-governing abilities * * *. The small town and rural man forever fights for liberty. He deserves a wage of a little extra legislative representation * * *."

Yates County is the second most over-represented county in the state (R. 229).

34. See, *e.g.*, Lewis, *op. cit. supra*, p. 40.

35. Schattschneider, *Urbanization and Reapportionment*, 72 YALE L. J. 7 (1962).

over population in both houses of the legislature, this would mean that, on a national level, 30% of the population would have the power to elect 99% of the legislators. Moreover, the concept of area representation embodies notions of localism which are today as anachronistic as the belief in rural virtue as opposed to urban vice. In today's America, one out of every five persons moves each year.[36] We are witnessing a dynamic readjustment of our population with a shrinking of both the rural population and the population of the center city and a vast expansion of suburbia. It is arbitrary and irrational in the context of this rapid population movement to weight a citizen's vote on the basis of where he happens to be resident at the time of a particular election. Among other vices, New York's apportionment system is entirely obsolete.[37]

Modern political scientists and commentators agree that it is easier for a political representative in a less densely populated area both to be advised of the thinking of his constituents and to inform them of his beliefs and opinions. Matters of purely local concern receive much more attention in a small community newspaper or over a small community radio station than is possible in a more densely populated area. If, therefore, the notion of "accessibility" which the district court relied upon in approving the present apportionment of New York has any merit, it is an argument in support of appellants' position.

If the district court was correct in its holding that the New York apportionment is rational because of considerations of "area" and "accessibility", then *Baker* v. *Carr* will permit judicial intervention in only a very few of the

36. *Ibid.*

37. See City's Brief pp. 55-60 for a further development of this point.

very many instances in which gross malapportionment infects our state legislatures. And even in those instances, the malapportioned legislatures themselves may readily preserve the status quo, if they so choose, by unabashedly adopting legislation explicitly designed to discriminate against voters in the more populous areas in the same manner in which their present apportionments so discriminate. If no more rationality is required than the bold assertion that rural voters are to be preferred, then the inequities which now exist in many states by virtue of the passage of time and shifts in population may be perpetuated by the enactment of legislation explicitly designed to achieve this end. The net result will have been to place judicial sanction on malapportionment which results not from accident but design and the cause of revitalizing state government and fostering local responsibility will suffer a severe setback.[38]

38. See McKay, *op. cit. supra* fn. 28 at 705.

"*Baker* v. *Carr* marks the full maturation of the liberterian aspects of the equal protection clause and provides the courts, federal and state alike, with an opportunity to vindicate as a constitutionally protected right the assurance to all persons of an opportunity to full and equal participation in the principal rite of the democratic process, the exercise of the franchise. As state legislatures become more fully responsive to the electorate whom they serve there should be renewed opportunity for the states to demonstrate the wisdom of reserving to the states those powers not committed to the national government.* The plea of states' rights can become again the dignified and meaningful claim to separate sovereign rights and obligations that it should always have been, rather than the strident and prideful cry it has sometimes seemed."

*"[T]here is a strong national interest in encouraging vigorous and responsible State and local government." House Comm. on Gov't Operations, *Federal-State-Local Relations: Federal Grants-In-Aid*, H.R. Rep. No. 2533, 85th Cong., 2d Sess. 47 (1958). See also THE EDITORS OF FORTUNE, THE EXPLODING METROPOLIS 1 (1957); U. S. COMM'N ON INTER-GOVERNMENTAL RELATIONS, REPORT TO THE PRESIDENT 3, 38, 40 (1955)].

b) MacDougall v. Green and Gray v. Sanders.

MacDougall v. *Green*, 335 U. S. 281, is not contrary to appellants' position and does not indicate that a state may apportion its legislature disproportionately to population. Challenge, in that case, was directed at an Illinois statute governing the nominating procedures by which a political party established a right to appear on a state-wide ballot. The Illinois statute required that any political party as a condition of *initial* access to the ballot, furnish nominating petitions contain at least 25,000 signatures including a minimum of 200 voters from each of at least 50 of the 102 counties of the state. It was, thus, in the context of a nominating process prior to a state-wide election, that this Court wrote (335 U. S. at 284):

> "It would be strange indeed, and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws, to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, *in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former.*" (Emphasis added.)

Obviously, this reasoning of the Court is entirely inapplicable to matters of state legislative apportionment which in New York concern 150 separate Assembly districts and 58 separate Senate districts. Only those resident in the particular district have a right to participate in the election of each Assemblyman and each Senator. The majority does not have the "practical opportunities for exerting [its] political weight at the polls" of which the Court spoke in *MacDougall*.

If, however, an analogy is to be drawn from decisions involving state-wide office, *Gray* v. *Sanders*, 372 U. S. 368, not *MacDougall*, points the way. In the *Sanders* case, the Court wrote at 379-381:

> "Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions. . . .
>
> "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote".

While we fully recognize the explicit qualification of that decision to cases involving a single constituency, we believe it to reflect prevailing judicial and popular attitudes concerning equality of voters. If within the state as a whole the concept of "one man—one vote" is mandatory, it is difficult to perceive how or why notions of inequality should be tolerated when the state is divided into political subdivisions. Were the offices involved county or municipal offices, the size of a constituency might not greatly concern one living outside the district—the persons elected would have no power or authority over the outsider. But here the offices are in

the state legislature with power to govern over the entire state. If, in the election of the governor, everyone's vote must be equal (*Gray* v. *Sanders*)—in the election of the legislature—a body which collectively constitutes a state-wide authority, the same concept should prevail. It is imperative to bear in mind that this case does not involve the rights of local governments to govern over their separate districts or the size of such districts for purposes of local self-government—it involves the right of all citizens to have an equal voice in determining the composition of the legislature which governs over the state as a whole.

c) Apportionment Must be Proportionate to Population.

In short, we embrace and endorse the majority position adopted by the Advisory Commission on Intergovernmental Relations in its report, "Apportionment of State Legislatures", Dec. 1962, p. 67:

> "*'Equal protection of the laws' would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature, be based strictly on population.*"

See also *Sincock* v. *Duffy, supra; Moss* v. *Burkhart,* F. Supp. (W.D. Okla., July 17, 1963).

Apportionment on a population basis does not of course mean that all other factors are disregarded in determining the composition of the legislature. Obviously this standard does not demand that the state be divided arbitrarily into sectors of precisely equal population without regard to natural boundaries or previously existing units of local government. However, the use of other valid criteria need not, and indeed must not, prevent the result-

ing districts from being approximately equal in population. Where other considerations conflict with the principle of equality of population—for example, where there is a desire to provide one representative for each political subdivision and the number of political subdivisions in relation to the total size of the legislature makes this not feasible—the other considerations must yield in favor of the requirement of equal population made paramount by the Fourteenth Amendment. In other words, the equal protection clause requires precisely the converse of the state apportionment provisions which first declare that Senate and Assembly districts shall be as nearly equal in population as possible and then subordinate this concept to other considerations which effectively preclude population equality. See p. 21, fn 7; pp. 25-31, *supra*. Counties must be joined, the size of the legislature increased or some other accommodation made—but voters may not be made to suffer reduced rights of the franchise.

Mathematical exactitude is not required and as a practical matter is not always attainable. The law has always recognized a concept of *de minimus*. Where variations between population and representation exist however, they must be so slight as not to distort the concept of the legislature being representative of the people. Such deviations should be permitted only within a narrow range. The existence of any significant variations should cast upon the state the burden of explaining and justifying the need for such variations. To the extent that any variations from population are constitutionally tolerable, they must result solely from the desire to make the accommodations described above and not from a desire purposefully and systematically to discriminate against one class of citizens. The fact that such variations consistently operate to the detriment of one class of voter would make their existence

particularly suspect; an explicit intent to deviate from population because of a hostility towards one class of citizens would render the apportionment invalid. See pp. 55-63, *infra*.

d) The Constitutional Provisions for Apportionment of Both Houses of the Legislature Should be Invalidated.

The question of the so-called federal analogy—*i.e.* whether, by analogy to the federal congress one house may represent population and another house represent political subdivisions[39]—is not presented by the instant case. In New York, both houses of the legislature are seriously malapportioned. As we will show in the section on the absence of a political remedy (*infra* p. 66), no effort has been made by the legislature to correct the situation in either house. We believe that this court should reject as inapplicable the so-called federal analogy (see *Gray* v. *Sanders*, 372 U. S. 368) and hold that in both houses of the legislature population must be the controlling factor (see *Sincock* v. *Duffy*, *supra*). However, even if this Court were to accept some version of the federal analogy, the people of the State of New York have never definitely indicated which house of their legislature would be the body to represent population rather than political subdivisions.

The situation in New York is unusual. The term of office of both Senators and Assemblymen is two years.[40] The smaller body—the 58 man Senate—is more nearly apportioned in relation to population than the 150 man

39. For a compelling statement of the reasons why the federal analogy should be rejected, see McKay, *Reapportionment and the Federal Analogy* (NAT'L MUNICIPAL LEAGUE, Aug. 1962).

40. N. Y. Const. Art. III, §2, App. A *infra*, p. 75.

Assembly.[41] Counties may be joined in forming single Senate districts whereas each county (except Fulton and Hamilton) has at least one Assemblyman.

It is not possible, therefore, to say that in New York either the Senate or the Assembly is the body which must—if only one house must—be apportioned in direct relationship to population. It would be incongruous if, on the basis of the federal analogy, the smaller upper house were selected to represent population. In any event, clearly, this is a decision which should be made in the first instance by the legislature and not a court. Since both the Senate and Assembly apportionment formulae are contained in the State constitution, the legislature would not be free to choose which formula to alter unless both were invalidated.

If the apportionment formula for only one house were invalidated, the legislature could enact an immediately effective statute with respect to that house only, but would have to proceed by the cumbersome procedure of constitutional amendment with respect to the other house. A minimum of three years must elapse between initial action on such an amendment and the time it could take effect.

Therefore, regardless of whether this Court accepts or rejects the federal analogy in litigation which is directed at only one house of another state's legislature, the relief sought in this action as to both malapportioned houses should be granted to enable the legislature to deal with the problem of reconstituting the state government as a whole rather than by piecemeal measures widely separated in time of effectiveness.

Moreover, the doctrine of separability is applicable here. The composition of the bicameral legislature is a single

41. In the Senate, the ratio between the largest and smallest district was 2.4 to 1 in 1950; in the Assembly, the ratio was 11.9 to 1. See p. 34, *supra*.

complex interrelated problem. The provisions relating to the number and terms of Senators and Assemblymen are, for example, contained in a single section of the constitution, Art. III, §2. In addition, the constitution prohibits the establishment of Assembly districts which include parts of more than one Senate district; therefore, the districting provisions for the two houses are inter-dependent. Hence, the entire apportionment structure should be invalidated and referred to the legislature for revision. See *Sincock* v. *Duffy*, 215 F. Supp. 169, 188-189; see also 195-196 (opinion concurring in part and dissenting in part) (Del. 1963) appeal pending, No. 307 Oct. T., 1963, *sub nom. Roman* v. *Sincock; Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312. This can only occur if the constitutional provisions for apportionment of both houses (Art. III, §§2-5) are invalidated.

III. The District Court Did not Rehear and Reconsider in the Manner Contemplated by this Court's Remand.

In remanding this case, this Court wrote that: "On March 26, 1962, we held in *Baker* v. *Carr*, 369 U. S. 186, that a justiciable federal constitutional cause of action is stated by a claim of arbitrary impairment of votes by means of invidiously discriminating geographical classification * * *. As in *Scholle* v. *Hare*, 369 U. S. 429, we believe that the court below should be the first to consider the merits of the federal constitutional claim, free from any doubts as to its justiciability and as to the merits of alleged arbitrary and invidious geographical discrimination." *WMCA, Inc.* v. *Simon*, 370 U. S. 190, 191.

We submit that this Court intended this burden of showing invidious discrimination to be a meaningful one

which was capable of being met in circumstances not limited to the particular facts involved in the Tennessee case. The remand was not intended to be an academic matter nor an exercise in futility. But the district court made it this in holding that:

A. The appellants had the burden of proving the unconstitutionality of the apportionment provisions which had a presumption of constitutionality made all the stronger by virtue of the fact that they were included in the state constitution itself, and, in further holding that a showing of the extent of malapportionment and the extreme under-representation of residents in the more heavily populated areas did not establish either a *prima facie* case which the State must justify or rationalize or a *per se* violation which could never be justified or rationalized.

B. All matters relating to a purpose and intent to discriminate and all matters relating to economic deprivations suffered by virtue of the malapportionment were irrelevant.

(a) *The district court erred in placing an undue burden of proof on appellants.*

We respectfully submit that appellants more than met whatever procedural burden they may have had when the parties stipulated to the apportionment data of the state (R. 226-242). *Davis* v. *Synhorst*, 217 F. Supp. 492, 497 (S.D. Iowa 1963); *Sincock* v. *Duffy*, *supra*; *Moss* v. *Burkhart*, 207 F. Supp. 885, 891 (W.D. Okla. 1962). True, statutes are presumed to be constitutional and the challenger has an initial burden to come forward to show that those statutes infringe constitutional rights. Where, for example, the challenge is based on an alleged infringement of the equal protection clause by some regulation or

classification of an economic nature, the burden is a formidable one and continues to rest with the plaintiffs until the presumption is overcome by compelling evidence. Where, however, the challenge relates to the exercise of basic civil liberties, then, and for good reason, the presumption of validity disappears (or is satisfied) when such an infringement is alleged (and the allegation is clearly not frivilous).[42] "There are limits to which the presumption of constitutionality can be pressed * * *." *Skinner* v. *Oklahoma*, 316 U. S. 535, 544. The state, operating in an area where its power is severely circumscribed rather than being plenary, must establish the reasonableness and authority for the restraint placed upon the exercise of the civil liberty.

Nowhere does this concept have greater force than when related to such activities as free speech and the exercise of the franchise which are processes themselves relied upon to correct governmental abuses. We urge that an affirmative answer must be given to Justice Stone's query in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, fn. 4:

> "* * * whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subject to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation."

We further urge that apportionment cases are primary examples of instances in which a "more exacting judicial scrutiny" must be furnished.[43]

---

42. McKay, *op. cit. supra*, fn. 28 at p. 677.

43. See also *Yick Wo* v. *Hopkins*, 118 U. S. 356, in which Justice Matthews observed that the political franchise of voting, "* * * is regarded as a fundamental political right, because preservative of all rights." 118 U. S. at 370.

Nor was the lower court justified in increasing appellants' burden solely by virtue of inclusion of the apportionment provisions, in 1894, in the state constitution. Of course, state constitutions may offend the federal constitution. From the standpoint of the federal constitution, it is irrelevant whether the discrimination is primarily a result of designed legislative inaction contrary to the state constitution, as in *Baker*, or of affirmative action which takes the form of enactment of constitutional provisions and statutes implementing those provisions, as in this case. Cf. *Giles* v. *Harris*, 189 U. S. 475; *Pierce* v. *Society of Sisters*, 268 U. S. 510; *Gibson* v. *Board of Public Instruction*, 170 F. Supp. 454, 456 (S. D. Fla.) (1958).

A group temporarily dominant in a single state[44] cannot abrogate the federal constitution by a majority vote. Indeed, in other apportionment cases the courts have recognized that inclusion of the apportionment provisions in the state constitution in no way altered the the basic problem before the court.[45] We respectfully submit that the lower court erred when it held that "unless the invalidity is clear and definite", the apportionment provisions would not be overthrown *because* they were embodied in a state constitution (R. 313-314) —and thereby imposed upon the appellants a greater burden than if the provisions were purely statutory.

When, therefore, appellants showed that malapportionment existed to the extent demonstrated in this case at least a *prima facie* case was established. We believe that even more was shown—that a *per se* violation was demonstrated and that *nothing* that the State could say or cite

44. The apportionment formula was adopted in 1894 by a vote of 404,335 to 350,625 (R. 297).

45. See, *e.g.*, *Toombs* v. *Fortson*, 205 F. Supp. 248 (N.D. Ga., 1962).

would justify such gross disproportions in both houses of the legislature. *Sincock* v. *Duffy, supra,* 215 F. Supp. at 185. But the question of whether appellants established merely a *prima facie* case or showed a *per se* violation is an academic one in this case. The district court did not dismiss at the conclusion of appellants' case but called upon the State to present its evidence (R. 182-183). The State in fact called no witnesses and offered no evidence beyond the stipulated facts.[46] It, therefore, failed to meet—if it could possibly ever meet—the burden cast upon it by appellants' proof.

This Court, therefore, should reverse the court below and remand the case with instructions to grant the relief sought in the complaint.

(b) *The district court erred in refusing to consider the purpose and intent of the apportionment provisions and the economic consequences of malapportionment.*

(i) *Purpose and intent*

In support of the allegation of the complaint alleging a purposeful and systematic discrimination against urban

46. Counsel for the State indicated that, but for the rulings of the court limiting the scope of admissible evidence, the State would have presented evidence. Whereupon, the following colloquy took place (R. 182-183):

> "Judge Waterman: We are neither interested in what you might have done or interested in what you could have done. Do you have any evidence that you intend to put in on the issues as we have pitched them?
>
> "The answer is no, so you have a motion to dismiss, and you want to argue it, is that right?
>
> "Mr. Galt: That is correct, your Honor.
>
> "Judge Levet: I take it that there is no testimony that the State is going to put in?
>
> "Mr. Galt: In view of the Court's ruling this morning, we feel—
>
> "Judge Levet: No matter why it is, is it so?
>
> "Mr. Galt: It is so, your Honor."

residents (Complaint ¶17, R. 8-9), constituting affirmative legislative action discriminating against such residents (Complaint ¶22, R. 10-11; *cf. Gomillion* v. *Lightfoot*, 364 U. S. 339), appellants offered to prove that the apportionment provisions were adopted with the intent to discriminate against residents of New York City. The district court rejected this offer (R. 144-145) and nowhere in the opinion of the court below (including that portion of the opinion devoted to the so-called "historical basis" (R. 307-311)) is there any consideration or discussion of the legislative history of the 1894 amendment or of its purpose and intent.[47] The reasoning of the court below may be discerned from its prior opinion dismissing the complaint without a hearing, where the court wrote (202 F. Supp. at 471; R. 109):

> "The plaintiffs charge the State of New York with a 'purposeful and systematic plan' to discriminate against certain geographic areas and classes of persons. (Par. 17 of complaint) However, the rule is general with reference to the enactments of all legislative bodies that the courts cannot, with certain exceptions, inquire into the motives of the legislators. *Soon Hing* v. *Crowley*, 1885, 113 U. S. 703, 710. 'The knowledge and good faith of a legislature are not open to question. It is conclusively presumed that a legislature acts with full knowledge and in good faith'. *United States* v. *Des Moines, etc., Company*, 1892, 142 U. S. 510, 544. See also, *Sonzinsky* v. *United States*, 1937, 300 U. S. 506, 513; *McGowan* v. *Maryland*, 1961, 366 U. S. 420, 468, 469."

47. Ironically, in the New York congressional districting case, *Wright* v. *Rockefeller*, 211 F. Supp. 460, *appeal pending* No. 96, Oct. T. 1963, probable jurisdiction noted, 374 U. S. 803, a differently constituted district court sitting in the Southern District of New York denied relief because of a failure to prove a purpose or motive to discriminate in drawing the congressional boundaries.

That the court adhered to this view at the hearing following this Court's remand of the case is evident from the following colloquy (R. 144-145):

> "Mr. Sand: I would offer to show that each rule which specifically operates to restrict and limit the representation of the residents of the City of New York was intentionally devised for the very purpose of creating a class of citizens within the state whose vote was not equal to that of another preferred class of citizens in the state.
>
> "Judge Waterman: As to that offer of proof, the Court unanimously excludes it on the ground that what caused the Legislature to act or what proof may be introduced at this stage as to the Constitutional Convention's thinking in 1894 would have to be of such a nature that it isn't of any interest to this Court. All we have before us is a question of law, and the question of law is not involved with the intent in the minds of whoever may have happened to be members of the Constitutional Convention of 1894."[48]

It is respectfully submitted that the lower court's refusal to consider the legislative history and background of an enactment said to discriminate intentionally against a class of citizens is contrary to the holding and practice of this and other federal courts in cases involving basic civil liberties.[49]

---

48. Had the lower court rejected appellants' offer of proof and proceeded to note judicially the legislative history of the apportionment provisions alleged by appellants to show an intent to discriminate, the issue before this Court might be a different one. The court made clear, however, that it regarded all such matter as irrelevant and immaterial and, although judicially noting other facts (R. 296-298) made no reference to the legislative history of the present apportionment formulæ.

49. In so ruling, the district court relied in its first opinion of dismissal (R. 109) upon cases in which it was unsuccessfully con-

In *Davis* v. *Schnell*, 81 F. Supp. 873 (S. D. Ala. 1949), *aff'd*, 336 U. S. 933, the plaintiffs alleged that an amendment to the Alabama constitution violated their rights under the federal constitution. The lower court summarized plaintiffs' contentions as follows:

> "They allege that this amendment was purposely sponsored, its adoption obtained, and its provisions are being administered so as to prevent the plaintiffs and others, because of their race, from exercising their right to vote," 81 F. Supp. at 874.

In invalidating this amendment to the Alabama constitution, the court discussed in great detail the legislative history and background leading to the adoption of the amendment, including the statements made by those who

---

tended that legislation designed to accomplish one purpose was in fact motivated by some other desire although neither the legislative history of the statute nor its language disclosed the alleged ulterior motive. Thus, in *Soon Hing* v. *Crowley*, 113 U. S. 703, 710, the Court wrote: "There is nothing, however, in the language of the ordinance, *or in the record of its enactment*, which in any respect tends to sustain this allegation [of intent to discriminate against Chinese]" (emphasis added). In *Sozinsky*, reference is made to "hidden motives" (300 U. S. at 513) and in *McGowan* the Court speaks of "private and unformulated influences." 366 U. S. at 469. Obviously, such circumstances are distinguishable from cases, such as the instant one, in which reliance is placed, not on a hidden ulterior motive for legislation innocuous on its face, but on explicit legislative history to support the contention that the state intended to do what it in fact accomplished—discriminate against a class of citizens. Nor is there here involved an inquiry into the "personal motives" of the delegates. *Baker* v. *Carr*, 369 U. S. at 337 (dissenting opinion of Mr. Justice Harlan). See Israel, *On Charting a Course Through the Mathematical Quagmire: The Future of Baker* v. *Carr*, 61 MICH. L. REV. 107, 140 fn. 138. More apposite is the language (369 U. S. at 335) where, in distinguishing the Tuskegee case, Mr. Justice Harlan wrote: "It is not that Tennessee has arranged its electoral districts with a deliberate *purpose* to dilute the voting strength of one race, *cf. Gomillion* v. *Lightfoot*, 364 U. S. 339, or that some religious group is *intentionally* underrepresented." (emphasis added)

sponsored and advocated adoption of the amendment. For example, the court wrote:

> "The activities of this committee in supporting and leading the fight for the adoption of the Boswell amendment are admissible and material in determining whether the Boswell Amendment is a contrivance by the State to thwart equality in the enjoyment of the right to vote by citizens of the United States on account of race or color." (p. 879)

After tracing the history of the amendment, the court wrote:

> "All of the foregoing but illustrates the *intention and general understanding* of the Legislature and electorate of Alabama at the time this Amendment was adopted by a small majority of a light vote." (Emphasis added.) (p. 880)

Summarizing the actual practice under the amendment, the court concluded:

> "It, thus, clearly appears that this Amendment was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color." (p. 880)

See *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45, 53 where this Court referred to the "legislative setting" of the amendment invalidated in *Davis* v. *Schnell*.

Other instances in which courts, including this Court, have considered the legislative background of an enactment to discern whether the intent thereof is to discriminate in violation of constitutional rights may be cited. In *Harrison* v. *N.A.A.C.P.*, 360 U. S. 167, this Court took note of the district court's findings that the

acts there in question were passed "'• • • 'to nullify as far as possible the effect of the decision of the Supreme Court in *Brown* v. *Board of Education*, 347 U. S. 483 • • •' as parts of the general plan of massive resistance to the integration of the schools of the state under the Supreme Court's decrees'". 360 U. S. 167, 175.

See also *Orleans Parish School Board* v. *Bush*, 242 F. 2d 156, 165 (5th Cir. 1957); *Board of Supervisors of La. St. U. etc.* v. *Ludley*, 252 F. 2d 372, 376 (5th Cir. 1958); *Ludley* v. *Board of Supervisors of L. S. U.*, 150 F. Supp. 900, 902-903 (5th Cir. 1957).

As the court wrote in *N.A.A.C.P.* v. *Patty*, 159 F. Supp. 503, 515, fn. 6 (E.D. Va. 1958), *aff'd sub nom. Harrison* v. *N.A.A.C.P.*, 360 U. S. 167:

> "While it is well settled that a court may not inquire into the legislative motive (*Tenney* v. *Brandhove*, 341 U. S. 367, 377, 71 S. Ct. 783, 95 L. Ed. 1019), it is equally well settled that a court may inquire into the legislative purpose. (See *Baskin* v. *Brown*, 4 Cir., 174 F. 2d 391, 392-393, and *Davis* v. *Schnell*, D. C., 81 F. Supp. 872, 878-880, affirmed 336 U. S. 933, 69 S. Ct. 749, 93 L. Ed. 1093, in which state efforts to disenfranchise Negroes were struck down as violative of the Fifteenth Amendment). Legislative motive—good or bad—is irrelevant to the process of judicial review; but legislative purpose is of primary importance in determining the propriety of legislative action, since the purpose itself must be within the legislative competence, and the methods used must be reasonably likely to accomplish that purpose. Because of this necessity, a study of legislative purpose is of the highest relevance when a claim of unconstitutionality is put forward. Usually a court looks into the legislative history to clear up some statutory ambiguity, as in *Davis* v. *Schnell*, D. C., 81 F. Supp. at page 878; but such

ambiguity is not the *sine qua non* for a judicial inquiry into legislative history. See the decision in *Lane* v. *Wilson*, 307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1281, in which the Supreme Court showed that the state statute before the court was merely an attempt to avoid a previous decision in which the 'grandfather' clause of an earlier statute had been held void."

If, as the foregoing cases fully demonstrate, evidence of the purpose and intent of a state legislature to discriminate (as established by the "legislative setting" of the challenged enactment, *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. at 53), is admissible and material where the action is based on a violation of the Fifteenth Amendment, we can conceive of no reason why such evidence is not equally admissible and material with respect to an alleged violation of the Fourteenth Amendment. And, the fact that the "legislative setting" relates to a more remote period of time, makes inquiry into such setting even more important than if the events were current and vivid in the minds of the court.

If we are in error in our principal contention that the population statistics alone established a *prima facie* case which the state failed to meet, then we respectfully urge that the district court erred in excluding from its consideration all material relevant to the purpose and intent of the convention in enacting the apportionment formulae. This ruling effectively frustrated a full inquiry into the question whether, apart from the question of numerical disparities alone, those formulae invidiously discriminate against appellants and persons similarly situated.

If in fact an intent existed to discriminate against urban residents, towards whom the then majority felt

antipathy, the adoption of the apportionment provisions and the statutes implementing them constituted, as alleged in the second cause of action (R. 10-12), affirmative legislative action in violation of appellants' constitutional rights (cf. *Gomillion* v. *Lightfoot*, 364 U. S. 339, 346)—a contention entirely ignored by the district court. Moreover, if any variations from representation based on population distribution may be tolerated under the Fourteenth Amendment, whether they are the accidental product of an apportionment innocently devised or the calculated result of an intent purposefully and systematically to discriminate against a class of citizens, is surely relevant in determining the extent of the tolerable variations.

The most persuasive evidence of what the Constitutional Convention of 1894 intended to accomplish is, of course, what the Convention did, *i.e.*, enact an apportionment procedure which provides a different and more onerous standard for establishing the entitlement to representation of the more heavily populated areas of the state. See pp. 26-31, *supra*. Were there no more evidence of an intent to discriminate than this, we submit a sufficient showing would be made solely on the basis of the effects of the apportionment system devised by the Convention. *Cf. Gomillion* v. *Lightfoot*, 364 U. S. 339.

However, one need not merely infer intent from what the Convention *did*; what the delegates to the Convention *said*, during the Convention proceedings, made explicit the purpose and intent of the Convention to discriminate against residents of such areas in the apportionment of the legislature. The records of the Convention disclose that the basis for this discrimination was a belief that residents of the heavily populated areas were inferior morally, intellectually and in ability to govern.

We have set forth in Appendix C, pp. 131-139, portions of the legislative history of the constitutional provisions

upon which appellants rely in support of these allegations. Appellants rely solely on the record of the proceedings of the constitutional convention as set forth in the REVISED RECORD OF THE NEW YORK STATE CONSTITUTIONAL CONVENTION OF 1894 and described in Lincoln, THE CONSTITUTIONAL HISTORY OF NEW YORK (1905). The material may appropriately be judicially noted and appellants urge that if this Court deem intent to be relevant, it determine in the first instance whether an intent to discriminate existed and is manifested in the New York apportionment formulae. Until such a determination is made, any evaluation of the state's apportionment must be predicated on the assumption that such an intent existed. As noted, the complaint alleges a purposeful and systematic plan to discriminate (¶17, R. 8) and the district court, in holding intent to be irrelevant, in effect held that, even if such intent existed, the apportionment would nevertheless be constitutional. If this Court should decline to resolve this question in the first instance, then the very minimum relief to which appellants are entitled is that the decision below should be reversed and remanded with instructions to admit the proffered evidence and to adjudicate the question whether or not New York's apportionment formulae is discriminatory in the light of all the facts and circumstances pertaining to those formulae, including its "legislative setting" and the purpose and intent with which it was enacted.

(ii) *Economic consequences of malapportionment; deprivation of due process.*

The complaint alleged that "The Plaintiffs are denied the right to due process and the equal protection of the laws as guaranteed by the XIV Amendment to the

Constitution of the United States * * *" (¶6, R. 4). The complaint further alleged:

> "The State Legislature, the apportionment of which is controlled by the provisions challenged herein, has, as a result of such apportionment, consciously and purposefully discriminated against the Plaintiffs and others similarly situated in such manner as to deprive such persons of due process and the equal protection of the laws.
>
> "As a result of the aforesaid malapportionment the legislature of New York for a number of years has denied to Plaintiffs and to others similarly situated the equal protection of the laws by unjustly discriminating against large segments of the population of the state in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the state through the exercise of the taxing powers. Plaintiff W.M.C.A., Inc. and the individual plaintiffs have been subjected to taxation without adequate representation in violation of the XIV Amendment." (¶18, R. 9)

Appellants and appellees representing the City of New York and the County of Nassau offered proof in support of these allegations of the complaint (R. 132, 142, 147, 149.)[50]

50. See also R. 133-134, where appellants offered to prove by competent testimony the material set forth in the affidavit of appellant R. Peter Straus. Mr. Straus' affidavit sets forth in detail many specific instances in which the residents of New York City are discriminated against by the malapportioned legislature (R. 250-268i). This affidavit, in a substantially similar version, together with the affidavit of Dr. Silva, were originally annexed to appellants' moving papers in connection with their motion to convene a three-judge court (Original Transcript, pp. 43-94). Mr. Straus' affidavit was updated and it, and Dr. Silva's affidavit, were annexed as appendices to Appellants Opening Brief Before the Three-Judge Court (R. 131, 251). Both affidavits were marked as exhibits for identification to clarify the nature of appellants' offers of proof (R. 149-151).

The district court rejected these offers of proof and totally ignored appellants challenge to the constitutionality of the apportionment provisions insofar as it was predicated on the due process clause.[51]

We submit that it was error for the district court to deprive appellants of an opportunity to establish both a violation of the "due process clause" and an additional means of proving invidious discrimination in violation of the equal protection clause.

The interrelationship between the "due process" and "equal protection" clauses is well recognized. Cf. *Bolling* v. *Sharpe*, 347 U. S. 497. In *Baker* v. *Carr*, this Court thought it inappropriate to pass definitively on a due process claim at the preliminary stage of the proceedings in that case, 369 U. S. at 194-195, fn. 15.[52] Unfortunately, with respect to the due process claim—*i.e.*, the contention that, because of malapportionment residents of the most heavily populated areas suffer unlawful economic discrimination in the allocation of government benefits and services—the record here is equally meager since the district court permitted no evidence to be adduced in support of the claim.

Accordingly, we respectfully submit that, if this Court rejects the contention that proof of disparities from popu-

51. Paradoxically, while this district court believed proof of actual injury resulting from malapportionment to be irrelevant, the dissenting judges in *Scholle* v. *Hare*, 367 Mich. 176, 214, appeal pending No. 24, Oct. T. 1963, expressed the view that plaintiffs in the Michigan case had failed to prove unconstitutionality because of the lack of a showing of actual injury. (See R. 134, where this fact was called to the district court's attention.) See also *Sincock* v. *Duffy*, *supra*, in which the court noted the relationship between taxes paid to the state and representation in the legislature.

52. Challenge under the due process clause is here directed not at the statutes enacted by the malapportioned legislature but at the provisions which create the malapportionment which enables the passage of discriminatory legislation.

lation alone constitutes a *prima facie* case and either declines to make a finding in the first instance on the question of intent to discriminate or makes a finding adverse to appellants' contentions (see pp. 55-63, *supra*), this case should be remanded to the district court with instructions to permit the development of a full record on the issue of actual economic injury as proof of the existence of a violation of the Fourteenth Amendment.

IV. Appellants Lack any Practical Political Remedy; the Need for Judicial Intervention is as Great Here as in *Baker* v. *Carr* and *Gray* v. *Sanders*.

Although we do not concede that the existence of a political remedy would render a violation of the Fourteenth Amendment immune from judicial correction, *Moss* v. *Burkhart*, 207 F. Supp. 885, 894 (W. D. Okla., 1962), we note that in New York no such remedy exists.[53] Like Tennessee and Georgia, New York has no initiative and referendum procedure and repeated efforts to obtain such a means of constitutional amendment have all been in vain. See, *e.g.*, New York State Constitutional Convention Committee Report (1938), Vol. II, pp. 1224-28, Vol. VII, pp. 377, *et seq.*

Amendment procedures which require the approval of the malapportioned legislature itself of course exist, but cannot be regarded as a source of reform. See *Baker* v. *Carr*, 369 U. S. at 258-259 (concurring opinion of Mr. Justice Clark). The history of legislative non-action on this subject is clear. For example, in 1955, then Governor Averell Harriman's first annual message to the legislature recommended a constitutional amendment to "remedy

53. This point is exhaustively treated in the City's Brief and, to avoid repetition, the contentions are merely summarized herein.

the injustice of our present apportionment system". 1955 N. Y. Sess. Laws 1577-78. He repeated this recommendation in each succeeding year of his administration. See 1956 N. Y. Sess. Laws 1524 (annual message), 1632-33 (special message); 1957 N. Y. Sess. Laws 1730 (annual message); 1958 N. Y. Sess. Laws 1819-20 (annual message). The legislature did not act, despite the fact that as early as 1950 a report to the Joint Legislative Committee on Reapportionment of the legislature had concluded that: "The cities, particularly the City of New York, do not have equitable representation in either House" and that the present method of obtaining the ratio of population for apportioning senators is "unfair to urban districts". See *Preliminary Report to the Joint Legislative Committee on Reapportionment*, N. Y. Legis. Doc. 3144, 12 (1950).

The recent experiences with regard to the "Peck Commission"[54] give further ample evidence of the futility of waiting for the legislature to correct the present injustices. When this Commission, studying revision of the Constitution, began to give special attention to the inequities of the existing apportionment procedures, the Commission was allowed by the legislature to expire before it had even completed its recommendations.[55]

Apart from action by the legislature, the only other way the New York Constitution can be amended is by vote of the people *after* a proposed amendment has been adopted by a Constitutional Convention, N. Y. Const.

54. The Temporary State Commission on the Revision and Simplification of the Constitution, the Chairman of which was the Hon. David W. Peck, former Presiding Justice of the Appellate Division (1st Dept.) of the State of New York.

55. See Senate Intro. 3191 (1961) which would have extended the life of the Commission but which died in the Finance Committee.

Art XIX §2; *cf. id.* §3. A Constitutional Convention can be held only if a majority of the people voting thereon vote "yes" on the question, "Shall there be a convention to revise the Constitution and amend the same?" *Id.* §2. This referendum can be presented to the voters in only two ways:

> (1) at such times as the legislature may by law provide (which, for reasons stated above, may be disregarded as a practical alternative); and
>
> (2) once every twenty years at a general election (the question will next be presented in 1977).

The court below seized on this procedure and held that the majority had a political remedy available to it, primarily, if not solely, because this automatic referendum procedure exists, and because on November 5, 1957, the last time the question was presented, a majority of those voting on the question voted "no" (See R. 311-12).

Despite the opinion below, the 1957 vote against holding a constitutional convention cannot reasonably be interpreted as an expression of the majority on "the issue of apportionment". The question which was presented to the voter at the 1957 general election was: "Shall there be a convention to revise the constitution and amend the same?" As worded, the question had no relation whatsoever to legislative apportionment. The vote on this question was "yes" 1,242,568; "no" 1,368,063, *blank and void 2,608,204*. See N. Y. LEGIS. MAN. 1077-78 (1958). The vote was held in an off-year election. No state-wide offices were contested and voter turn-out was extremely light.

Furthermore, there is no basis for concluding that the vote on the question of holding the constitutional conven-

tion was the equivalent of a referendum on the issue of apportionment. Judge Levet's conclusion that the vote on the call for a Constitutional Convention was "heralded as an issue of apportionment" (R. 311) was unfounded. The only "herald" identified by Judge Levet is the then Governor of the State, Averell Harriman, and this on the basis of newspaper reports of three statements which Governor Harriman made in September and October of 1957 (See R. 311-12).

It would seem clear that no weight whatsoever should be given to anyone's opinion, however authoritative, as to the issue actually presented by a question being voted on in a State election.[56] In any event, the statements actually made by Governor Harriman (quoted extensively in the City's Brief) in no way equate the issue of legislative apportionment with a vote in favor of holding a constitutional convention.

Moreover, Governor Harriman was not the only public figure to express an opinion about the issues involved in the referendum on holding a constitutional convention. Former Governor Thomas E. Dewey, for example, urged a "no" vote on the grounds, not that a revision of the constitution was not needed, but that a convention was an "outmoded, unwieldy instrument" for effecting a revision and would "waste" at least $5,000,000. *New York Times*, Nov. 1, 1957, p. 1, col. 1. For attempts to achieve revision of the apportionment formulae by a commission on constitutional revision, see p. 67, *supra*. Former Governor Dewey opposed holding a convention on the ground also

56. The court's inquiry into the intent of the voters in this election contrasts sharply with its refusal to consider official and readily available records relating to the intent of the delegates to the 1894 Convention. See pp. 55-63, *supra*.

that it would have been used to promote the annexation of Nassau and Westchester counties to the City of New York and to raise the constitutional limit on real estate taxes. *Ibid.*

Entirely apposite here is the language of the federal district court in Iowa, which state also has a constitutional convention procedure. The court wrote:

> "The fact that the people of Iowa have repeatedly voted against a constitutional convention is persuasive, but not sufficient to establish their acceptance of the present apportionment. There is no possible way of knowing how many voters voted against the measure even though they regarded the present system as being unsatisfactory * * * Quite possibly a significant number felt that a convention would be futile inasmuch as the details would be left to a malapportioned General Assembly." *Davis* v. *Synhorst*, 217 F. Supp. 492, 501. (S. D. Iowa 1963).

See, also, *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962), *appeal pending sub nom. Meyers* v. *Thigpen*, No. 381, Oct. T. 1963.

Finally, it cannot be assumed that if a constitutional convention had been held following a "yes" vote, the majority would have been afforded a practical opportunity to exert its weight to correct the present discriminatory method of legislative apportionment. Delegates to the constitutional convention are elected 3 per Senate district, plus 15 delegates elected at large. N. Y. Const. Art. XIX §2. Thus, the same discrimination as exists in the Senate against each of the counties which has 6% or more of the state's population (see pp. 26-30, *supra*) also exists in electing delegates to constitutional conventions. If a

convention had been approved in 1957, the five counties then in this category, with 57.3% of the state's population would have been able to elect only 81 of the 174 district delegates (46.4% of the total). Even in the highly unlikely event that all of the statewide delegates would have been sympathetic to the interests of these counties, they still would have been represented by only 96 of the total of 189 delegates (50.8% of the total).

Clearly, a constitutional convention is not a political remedy for the future. The strong probability is that, in 1978 (the next opportunity to elect delegates to a constitutional convention if the vote in 1977 is in favor of a convention), the population of the counties having 6% or more of the state's population will be unable to elect a majority of the convention delegates including the delegates at large.[57]

In short, by any reasonable standard, the majority of the people of the State of New York do not have available a practical political remedy to correct the discrimination against them which inevitably results from the present method of legislative apportionment contained in the state constitution. In this respect, the position of the majority of the people of New York is no different from the position of the majority of the people of Tennessee or Georgia and the need for judicial intervention is as great here as in *Baker* v. *Carr* and *Gray* v. *Sanders*. Only this Court can cause majority rule to be restored to the 17,000,000 inhabitants of New York State.

57. See City's Brief pp. 87-88 for an analysis of the composition of such a convention in the light of present population trends.

CONCLUSION

For the reasons given above, the judgment of the court below should be reversed and the case remanded to the district court with a direction to grant the relief sought in the complaint. In the alternative, the judgment of the court below should be reversed and the case remanded to the district court with a direction to admit and consider the evidence excluded at the prior hearing.

Respectfully submitted,

LEONARD B. SAND,
Robinson, Silverman, Pearce & Aronsohn,

MAX GROSS,

Attorneys for Appellants.

September 1963

APPENDIX A

UNITED STATES CONSTITUTION, FEDERAL STATUTES AND STATE CONSTITUTION AND STATUTES INVOLVED.

UNITED STATES CONSTITUTION; Amendment XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the **United States and of the State where they reside. No State shall make or enforce any law which shall abridge** the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny** to any person within its jurisdiction the equal protection of the laws. • • •

FEDERAL STATUTES:

U. S. C., Title 42, Sections 1983 and 1988:

§ 1983 Civil Action for deprivation of rights—

Every person who, under color of any statute, ordinance, **regulation, custom or usage, of any State or Territory,** subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

§ 1988 The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this

chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

U. S. C., Title 28, Section 1343, § (3):

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person. * * * To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any rights, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

The Federal Declaratory Judgment Act. U. S. C., Title 28, Sections 2201 and 2202:

§ 2201. Creation of remedy.

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

§ 2202. Further relief.

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

THE CONSTITUTION OF THE STATE OF NEW YORK

ARTICLE III—LEGISLATURE

§ 1. The legislative power of this State shall be vested in the Senate and Assembly.

§ 2. The senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred and fifty members. The assemblymen elected in the year one thousand nine hundred and thirty-eight, and their successors, shall be chosen for two years.

§ 3. The senate districts described in section three of article three of this constitution as adopted by the people on November sixth, eighteen hundred ninety-four are hereby continued for all of the purposes of future reapportionments of senate districts pursuant to section four of this article.*

§ 4. Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes,

* As amended on November 6, 1962, effective January 1, 1963, McKinneys Consolidated Laws, Const. Art. III §3 (1963 Supp.). Prior to this amendment the Constitution contained a geographic description of the fifty senate districts under the 1894 apportionment. See Jurisdictional Statement, App. B, pp. 3b-10b. This amendment merely shortened and simplified the Constitution by incorporating this description by reference and made no relevant substantive change in the apportionment formula or procedures.

the legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabit-

ants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and

the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the terms of the senators then in office, except for the purpose of an election of senators, for full terms beginning at such expirations, and for the formation of assembly districts.

§ 5. The members of the assembly shall be chosen by single districts and shall be apportioned by the legislature at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, includ-

ing Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause

to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, except a town having more than a ratio of apportionment and one-half over, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in

number of inhabitants, excluding aliens. Nothing in this section shall prevent the division, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

State Statutes: State Law, Sections 120-124

§ 120. Present senate districts

The senate districts of this state, as existing immediately before the enactment of this article, shall continue to be the senate districts of the state until the expiration of the terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations and for the formation of assembly districts.

§ 121. New senate districts

Except as provided in section one hundred twenty, the senate districts of this state from and after the time this article takes effect, shall consist as follows:

First. The first senate district shall consist of the county of Suffolk.

Second. The second senate district shall consist of that part of the county of Nassau within and bounded by a line beginning at a point where the dividing line between the town of Hempstead and the town of North Hempstead is intersected by Clinton Road (Glen Cove Road) and the easterly boundary line of the incorporated village of Garden City, thence southerly along the boundary line of the incorporated village of Garden City to the dividing line between the incorporated village of Garden City and the incorporated village of Hempstead, thence in a westerly and southerly direction along said dividing line to the easterly boundary line of the incorporated village of Rockville Centre, thence southerly and westerly along said boundary line to the easterly boundary line of the incorporated village of East Rockaway, thence southerly along said boundary line to Station Plaza, to Atlantic avenue, to the intersection of Atlantic avenue, Nassau avenue and Bayside avenue, thence along Bayside avenue to Messick avenue, to Ebert avenue (Anchor street), to Yost Parkway, to Perkins avenue, to Messick avenue, to Oceanside Parkway (Weidner avenue), to Lawson Boulevard, thence along Lawson Boulevard and Lawson Boulevard extended to the waters of Simonson Channel and through the waters of Simonson Channel, Barnum Island Channel and Hog Island Creek to Reynolds Channel, thence westerly through the waters of Reynolds Channel to the dividing line between the county of Nassau and the county of Queens, thence northerly along said dividing

line to the intersection of said dividing line with the dividing line between the county of Queens, the town of Hempstead and the town of North Hempstead, thence easterly along the dividing line between the town of Hempstead and the town of North Hempstead to the place of beginning.

Third. The third senate district shall consist of that part of the county of Nassau which includes the town of North Hempstead, the town of Oyster Bay and the City of Glen Cove; also that portion of the town of Hempstead described as follows: beginning at a point where Bethpage Turnpike intersects the dividing line between the town of Oyster Bay and the town of Hempstead, thence in a westerly direction along Bethpage Turnpike to North Wantagh avenue, thence northerly to Boone street, to Farmedge Road, to the intersection of Farmedge Road and Henry street, thence along Henry street to Maple avenue (Edna avenue), to Jupiter Lane, to Farmedge Road, to Bloomingdale Road (Solar Lane), to Constable Lane, to Marksman Lane, to Barrister Road, to Welder Lane, to Coppersmith Road, to Coachman Lane, to Poet Lane, to the dividing line between the town of Hempstead and the town of Oyster Bay and thence easterly and southerly along said dividing line to the place of beginning.

Fourth. The fourth senate district shall consist of that part of the county of Nassau within and bounded by a line beginning at a point where the dividing line between the town of Hempstead and the town of North Hempstead is intersected by Clinton Road (Glen Cove Road) and the

easterly boundary line of the incorporated village of Garden City, thence southerly along said boundary line of the incorporated village of Garden City to the dividing line between the incorporated villages of Garden City and Hempstead, thence in a westerly and southerly direction along said dividing line to the easterly boundary line of the incorporated village of Rockville Centre, thence southerly and westerly along said boundary line to the easterly boundary line of the incorporated village of East Rockaway, thence southerly along said boundary line to Station Plaza, to Atlantic avenue, to the intersection of Atlantic avenue, Nassau avenue and Bayside avenue, thence along Bayside avenue to Messick avenue, to Ebert avenue (Anchor street), to Yost Parkway, to Perkins avenue, to Messick avenue, to Oceanside Parkway (Weidner avenue), to Lawson Boulevard, thence along Lawson Boulevard and Lawson Boulevard extended to the waters of Simonson Channel and through the waters of Simonson Channel, Barnum Island Channel and Hog Island Creek to Reynolds Channel, thence westerly through the waters of Reynolds Channel to the Atlantic Ocean, thence easterly through the waters of the Atlantic Ocean to the dividing line extended between the town of Oyster Bay and the town of Hempstead, thence northerly along said dividing line extended and said dividing line to Bethpage Turnpike, thence westerly along Bethpage Turnpike to North Wantagh avenue, thence northerly to Boone street, to Farmedge Road, to the intersection of Farmedge Road and Henry street, thence along Henry street to Maple avenue (Edna avenue), to Jupiter Lane, to Farmedge Road, to Bloomingdale Road (Solar Lane), to Constable Lane, to Marksman Lane, to Barrister Road, to Welder

Lane, to Coppersmith Road, to Coachman Lane, to Poet Lane, to the dividing line between the town of Hempstead and the town of Oyster Bay, thence westerly and northerly along said dividing line to the intersection of the town lines of Oyster Bay, North Hempstead and Hempstead, thence westerly along the dividing line between the town of North Hempstead and the town of Hempstead to the place of beginning; including the city of Long Beach.

Fifth. The fifth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Utopia Parkway extended intersects the waters of the East River, thence southerly along Utopia Parkway extended and Utopia Parkway to the intersection of Utopia Parkway with One Hundred and Sixty-ninth street, thence along One Hundred and Sixty-ninth street to Thirty-second avenue, to One Hundred and Sixty-eighth street, to Crocheron avenue, thence westerly along Crocheron avenue to Northern Boulevard, to Parsons Boulevard, thence southerly along Parsons Boulevard to Forty-fifth avenue, to Kissena Boulevard, to Elder avenue, to One Hundred and Thirty-third street, to North Hempstead Turnpike, thence easterly to One Hundred and Forty-first street, to Fifty-eighth avenue, to Main street, to Fifty-eighth Road, to One Hundred and Forty-second street, to Fifty-ninth avenue, to One Hundred and Forty-eighth street, to Sixtieth avenue, to One Hundred and Fiftieth street, to Horace Harding Boulevard, to One Hundred and Sixty-fourth street, thence southerly along One Hundred and Sixty-fourth street to Hillside avenue, to One Hundred and Sixty-third street, to Jamaica avenue, thence easterly to Hollis avenue, to Farmers Boulevard, thence southerly to One Hundred and

Twenty-second avenue, to Springfield Boulevard, to One Hundred and Twenty-first avenue, thence easterly along One Hundred and Twenty-first avenue and Francis Lewis Boulevard to the dividing line between the county of Queens and the county of Nassau, thence northerly along said dividing line to the waters of Little Neck Bay, thence westerly through the waters of Little Neck Bay, Long Island Sound and the East River to the place of beginning.

Sixth. The sixth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Glenmore avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Glenmore avenue to Seventy-sixth street, to Liberty avenue, to One Hundred and Second Road, thence along One Hundred and Second Road to Eighty-fourth street, to One Hundred and Second avenue, to Eighty-sixth street, to One Hundred and First avenue, to Ninety-third street, to Ninety-seventh avenue, to One Hundredth street, to Ninety-fifth avenue, to One Hundred and Tenth street, to Ninety-fifth avenue, to Lefferts Boulevard, to Eighty-ninth avenue, to One Hundred and Thirtieth street, to Jamaica avenue, to One Hundred and Fiftieth street, to Hillside avenue, to One Hundred and Sixty-third street, to Jamaica avenue, to Hollis avenue, to Farmers Boulevard, thence southerly to One Hundred and Twenty-second avenue, to Springfield Boulevard, to One Hundred and Twenty-first avenue, thence easterly along One Hundred and Twenty-first avenue and Francis Lewis Boulevard to the dividing line between the county of Queens and the county of Nassau, thence southerly along said dividing line as it winds and turns to the waters of the Atlantic Ocean and westerly through the waters of the Atlantic Ocean to the dividing

line between the county of Queens and the county of Kings, thence northerly along said dividing line as it winds and turns to the place of beginning.

Seventh. The seventh senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Glenmore avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Glenmore avenue to Seventy-sixth street, to Liberty avenue, to One Hundred and second Road, thence along One Hundred and Second Road to Eighty-fourth street, to One Hundred and Second avenue, to Eighty-sixth street, to One Hundred and First avenue, to Ninety-third street, to Ninety-seventh avenue, to One Hundredth street, to Ninety-fifth avenue, to One Hundred and Tenth street, to Ninety-fifth avenue, to Lefferts Boulevard, to Eighty-ninth avenue, to One Hundred and Thirtieth street, to Jamaica avenue, to One Hundred and Fiftieth street, to Hillside avenue, to One Hundred and Sixty-fourth street, thence northerly to Seventy-first avenue, thence westerly to Kissena Boulevard, to Seventieth Road, to One Hundred and Fifty-third street, to Jewel avenue, and thence westerly along Jewel Avenue to Sixty-ninth Road, to Grand Central Parkway, to Jewel avenue, to One Hundred and Eighth street, to Sixty-seventh avenue, thence along Sixty-seventh avenue (Roxton street) to Thornton Place, to Sixty-sixth avenue (Fleet street), thence westerly along Sixty-sixth avenue (Fleet street) to Alderton street, thence northerly along Alderton street to Woodhaven Boulevard, to Eighty-sixth street, to Sixtieth avenue, to Eighty-sixth street, to Fifty-eighth avenue, to Eighty-fourth street, to Fifty-seventh avenue, to Eighty-third street, to Fifty-fourth avenue, to Eighty-second street, to Grand avenue, to Mazeau street,

to Caldwell avenue, to sixty-ninth street, to Sixty-third avenue, to Sixty-ninth Place, to Sixty-ninth street, to Metropolitan avenue, thence westerly along Metropolitan avenue to the dividing line between the county of Queens and the county of Kings and southerly along said dividing line as it winds and turns to the place of beginning.

Eighth. The eighth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Utopia Parkway extended intersects the waters of the East River, then southerly along Utopia Parkway extended and Utopia Parkway to the intersection of Utopia Parkway with One Hundred and Sixty-ninth street, thence along One Hundred and Sixty-ninth street to Thirty-second avenue, to One Hundred and Sixty-eighth street, to Crocheron avenue, thence westerly along Crocheron avenue to Northern Boulevard, to Parsons Boulevard, thence southerly along Parsons Boulevard to Forty-fifth avenue, to Kissena Boulevard, to Elder avenue, to One Hundred and Thirty-third street, to North Hempstead Turnpike, thence easterly to One Hundred and Forty-first street, to Fifty-eighth avenue, to Main street, to Fifty-eighth Road, to One Hundred and Forty-second street, to Fifty-ninth avenue, to One Hundred and Forty-eighth street, to Sixtieth avenue, to One Hundred and Fiftieth street, to Horace Harding Boulevard, to One Hundred and Sixty-fourth street, thence southerly along One Hundred and Sixty-fourth street to Seventy-first avenue, thence westerly to Kissena Boulevard, to Seventieth Road, to One Hundred and Fifty-third street, to Jewel avenue, and thence westerly along Jewel avenue to Sixty-ninth Road, to Grand Central Parkway, to Jewel Avenue, to One Hundred and Eighth street, to Sixty-seventh avenue, thence along Sixty-seventh avenue

to Ninety-ninth street, thence northerly along Ninety-ninth street to Sixty-fourth avenue, to Ninety-eighth street, to Horace Harding Boulevard, to Ninety-seventh street, to Fifty-seventh avenue, to Ninety-sixth street, to Christie avenue, to Junction Boulevard, to Fifty-first avenue, to Ninety-second street, to Fifty-second avenue, to Ninetieth street, to Fifty-first avenue, to Broadway, to Pettit Place, to Layton street, to Baxter avenue, to Broadway, to Brooklyn-Queens Connecting Highway, thence northerly along Brooklyn-Queens Connecting Highway to Astoria Boulevard South, to the intersection of Astoria Boulevard South, Thirty-first street and Hoyt avenue South at Columbus Square, thence westerly along Hoyt avenue South to the waters of the East River and the dividing line between the county of Queens and the county of New York, thence northerly along said dividing line to the dividing line between the county of Queens and the county of Bronx, thence easterly along said dividing line to the place of beginning.

Ninth. The ninth senate district shall consist of that part of the county of Queens within and bounded by a line beginning at a point where Metropolitan avenue intersects the dividing line between the county of Queens and the county of Kings, thence easterly along Metropolitan avenue to Sixty-ninth street, northerly to Sixty-ninth Place, to Sixty-third avenue, to Sixty-ninth street, to Caldwell avenue, to Mazeau street, to the intersection of Mazeau street, Fifty-seventh avenue and Grand avenue, thence along Grand avenue to Eighty-second street, to Fifty-fourth avenue, to Eighty-third street, to Fifty-seventh avenue, to Eighty-fourth street, to Fifty-eighth avenue, to Eighty-sixth street, to Sixtieth avenue to Eighty-sixth street, to Woodhaven Boulevard, to Alderton

street, to Sixty-sixth avenue (Fleet street), to Thornton Place, to Sixty-seventh avenue (Roxton street), to Ninety-ninth street, thence northerly along Ninety-ninth street to Sixty-fourth avenue, to Ninety-eighth street, to Horace Harding Boulevard, to Ninety-seventh street, to Fifty-seventh avenue, to Ninety-sixth street, to Christie avenue, to Junction Boulevard, to Fifty-first avenue, to Ninety-second street, to Fifty-second avenue, to Ninetieth street, to Fifty-first avenue, to Broadway, to Pettit Place, to Layton street, to Baxter avenue, to Broadway, to Brooklyn-Queens Connecting Highway, thence northerly along Brooklyn-Queens Connecting Highway to Astoria Boulevard South, to the intersection of Astoria Boulevard South, Thirty-first street and Hoyt avenue South at Columbus Square, thence westerly along Hoyt avenue South to the waters of the East River, thence southerly through Hell Gate and East Channel in the East River to Newton Creek and the dividing line between the county of Queens and the county of Kings, thence easterly along said dividing line to the place of beginning.

Tenth. The tenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Johnson avenue intersects the dividing line between the county of Kings and the county of Queens, thence westerly along Johnson avenue to Porter avenue, to Flushing avenue, to the intersection of Flushing avenue, Irving avenue and Melrose street, thence westerly along Melrose street to Wilson avenue, to Jefferson street, to Evergreen avenue, to Jefferson street, to Bushwick avenue, to Troutman street, to Myrtle avenue, to Broadway, thence southerly along Broadway to Stuyvesant avenue, to Willoughby avenue, to Broadway, to Reid avenue, to De Kalb avenue, to Broad-

way, to Patchen avenue, to Van Buren street, to Broadway, to Ralph avenue, to Putnam avenue, to Howard avenue, to the north lane of Atlantic avenue, to Ralph avenue, to the south lane of Atlantic avenue, to Howard avenue, to St. Marks avenue, thence easterly along St. Marks avenue to the intersection of St. Marks avenue, East New York avenue and Watkins street, thence along East New York avenue to Watkins street, to Liberty avenue, to Alabama avenue, to Atlantic avenue, to Georgia avenue, thence southerly to Belmont avenue, to Pennsylvania avenue, to Sutter avenue, to New Jersey avenue, to Linden Boulevard, to Pennsylvania avenue, to Vandalia avenue, thence along Vandalia avenue and Vandalia avenue extended to the waters of Fresh Creek Basin and through the waters of Fresh Creek Basin, Jamaica Bay, Big Channel and Rockaway Inlet to the dividing line between the county of Kings and the county of Queens, thence easterly and northerly along said dividing line to the place of beginning; including the islands in Jamaica Bay within the county of Kings.

Eleventh. The eleventh senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Eastern Parkway intersects Grand Army Plaza, thence easterly along Eastern Parkway to Franklin avenue, to St. Johns Place, to Rogers avenue, to Park Place, to Troy avenue, to Prospect Place, to Schenectady avenue, to Park Place, to Utica avenue, to St. Marks avenue, to Rochester avenue, to Prospect Place, to Buffalo avenue, to Park Place, to Ralph avenue, to St. Marks avenue, to Howard avenue, to the south lane of Atlantic avenue, to Ralph avenue, to the north lane of Atlantic avenue, to Howard avenue, thence northerly along Howard avenue to Putnam avenue, to Ralph avenue, to Broadway, to Van Buren street, to Patchen avenue, to

Broadway, to De Kalb avenue, to Reid avenue, to Broadway, to Willoughby avenue, to Stuyvesant avenue, to Broadway, to Myrtle avenue, thence westerly along Myrtle avenue to Throop avenue, to Vernon avenue, to Tompkins avenue, to Willoughby avenue, to Nostrand avenue, to Willoughby avenue, to Bedford avenue, to De Kalb avenue, to Flatbush avenue Extension, thence southerly along Flatbush avenue Extension to Fulton street, to Rockwell Place (Ninety-fourth street), to Lafayette avenue, to Flatbush avenue, thence southerly along Flatbush avenue to and around Grand Army Plaza to the place of beginning.

Twelfth. The twelfth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where East Twenty-fourth street intersects Quentin Road, thence easterly along Quentin Road to Nostrand avenue, to Gerritsen avenue, to Avenue R, to East Thirty-sixth street, to Flatlands avenue, to Avenue L, to Utica avenue, to Avenue M, to Ralph avenue, to Avenue A, to East Eighty-eighth street, to Ralph avenue, to Church avenue, to Remsen avenue, thence northerly along Remsen avenue to the intersection of Remsen avenue, Lefferts avenue, and Utica avenue, thence along Utica avenue to Eastern Parkway, to Troy avenue, to Park Place, to Rogers avenue, to St. John's Place, to Franklin avenue, to Eastern Parkway, to and around the southern end of Grand Army Plaza to Flatbush avenue, thence southerly along Flatbush avenue to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, to the intersection of Flatbush avenue, Foster avenue and Bedford avenue, thence along Bedford avenue to Glenwood Road, to East Twenty-third street, to Campus Road, thence westerly, southerly, and easterly along Campus Road to East Twenty-third street, to Ave-

nue I, to East Twenty-fourth street, to Avenue J, to East Twenty-third street, to Avenue K, to East Twenty-fourth street, to Avenue N, to East Twenty-third street, to Olean street, to East Twenty-fourth street, to the place of beginning.

Thirteenth. The thirteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bay Ridge avenue extended intersects the waters of Upper New York Bay, thence along Bay Ridge avenue extended and Bay Ridge avenue to Shore Road, thence northerly along Shore Road to Ridge avenue (Ridge Boulevard), thence along Ridge avenue and Second avenue to Sixty-fifth street, to Third avenue, to Sixty-third street, to Fourth avenue, to Forty-fifth street, to Fifth avenue, to Thirty-ninth street, to Ninth avenue, to Thirty-seventh street, to Fort Hamilton Parkway, to the intersection of Fort Hamilton Parkway, Prospect Park Southwest, Coney Island avenue and Parkside avenue at Park Circle, thence along Parkside avenue to Flatbush avenue and northerly along Flatbush avenue to and around the eastern side of Grand Army Plaza to Flatbush avenue, to Lafayette avenue, to Rockwell Place (Ninety-fourth street), thence along Rockwell Place (Ninety-fourth street) to Fulton street, to Flatbush avenue, to De Kalb avenue, to the intersection of De Kalb avenue and Fulton street, thence along Fulton street to Duffield street (Fifty-ninth street), to Willoughby street, to Bridge street, to Tillary street, to Duffield street (Fifty-ninth street), to Concord street, to Bridge street, to Prospect street, to Jay street, to Talman street, to Bridge street, thence northerly along Bridge street and Bridge street extended to the waters of the East River and southerly through the waters of the East River, Butter-

milk Channel and Upper New York Bay to the place of beginning.

Fourteenth. The fourteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bay Ridge avenue extended intersects the waters of Upper New York Bay, thence along Bay Ridge avenue extended and Bay Ridge avenue to Shore Road, thence northerly along Shore Road to Ridge avenue (Ridge Boulevard), thence along Ridge avenue and Second avenue to Sixty-fifth street, to Third avenue, to Sixty-third street, to Fourth avenue, to Forty-fifth street, to Fifth avenue, to Thirty-ninth street, to Ninth avenue, to Forty-first street, to the intersection of Forty-first street, Tenth avenue and New Utrecht avenue, thence southerly along New Utrecht avenue to Thirteenth avenue, thence along Thirteenth avenue to Fifty-sixth street, to New Utrecht avenue, to Sixty-third street, to Seventeenth avenue, to Sixty-second street, to Eighteenth avenue, to Shore Parkway, to Bay Nineteenth street, thence southerly along Bay Nineteenth street and Bay Nineteenth street extended to the waters of Gravesend Bay and northerly through the waters of Gravesend Bay, Lower Bay and Upper New York Bay to the place of beginning.

Fifteenth. The fifteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where West Tenth street extended intersects the waters of the Atlantic Ocean, thence northerly along West Tenth street extended and West Tenth street to Surf avenue, to West Twelfth street, to Neptune avenue, to Shell Road, thence northerly to Triton avenue to West Sixth street, to the intersection of West Sixth street and Shell Road, thence along Shell Road and

McDonald avenue to Avenue U, to West street, to Avenue T, to East Second street, to Avenue P, to East Third street, to Avenue O, to East Fourth street, to Avenue N, to East Fifth street, to Avenue L, to Ocean Parkway, to Eighteenth avenue, to East Fifth street, to Fort Hamilton Parkway, to Thirty-seventh street, to Ninth avenue, to Forty-first street, to the intersection of Forty-first street, Tenth avenue and New Utrecht Avenue, thence southerly along New Utrecht avenue to Thirteenth avenue thence along Thirteenth avenue to Fifty-sixth street, to New Utrecht avenue, to Sixty-third street, to Seventeenth avenue, to Sixty-second street, to Eighteenth avenue, to Shore Parkway, to Bay Nineteenth street, thence southerly along Bay Nineteenth street and Bay Nineteenth street extended to the waters of Gravesend Bay and southerly through the waters of Gravesend Bay, Lower New York Bay and the Atlantic Ocean to the place of beginning.

Sixteenth. The sixteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Bedford avenue extended intersects the waters of Sheepshead Bay, thence northerly along Bedford avenue extended and Bedford avenue to Shore Parkway, to East Twenty-third street, to Voorhies avenue, to East Twenty-fourth street, to Quentin Road, thence easterly along Quentin Road to Nostrand avenue, to Gerritsen avenue, to Avenue R, to East Thirty-sixth street, to Flatlands avenue, to Avenue L, to Utica avenue, to Avenue M, to Ralph avenue, to Avenue A, to East Eighty-eighth street, to Ralph avenue, to Church avenue, to Remsen avenue, thence northerly along Remsen avenue to the intersection of Remsen avenue, Lefferts avenue and Utica avenue, thence along Utica avenue to Eastern Parkway, to Troy avenue, to Prospect Place, thence easterly

along Prospect Place to Schenectady avenue, to Park Place, to Utica avenue, to St. Marks avenue, to Rochester avenue, to Prospect Place, to Buffalo avenue, to Park Place, to Ralph avenue, to St. Marks avenue, to the intersection of St. Marks avenue, East New York avenue and Watkins street, thence along East New York avenue to Watkins street, to Liberty avenue, to Alabama avenue, to Atlantic avenue, to Georgia avenue, thence southerly to Belmont avenue, to Pennsylvania avenue to Sutter avenue, to New Jersey avenue, to Linden Boulevard, to Pennsylvania avenue, to Vandalia avenue, thence westerly along Vandalia avenue and Vandalia avenue extended to the waters of Fresh Creek Basin and through the waters of Fresh Creek Basin, Jamaica Bay Big Channel and Rockaway Inlet to Sheepshead Bay and to the place of beginning.

Seventeenth. The seventeenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where West Tenth street extended intersects the waters of the Atlantic Ocean, thence northerly along West Tenth street extended and West Tenth street to Surf avenue, to West Twelfth street, to Neptune avenue, to Shell Road, thence northerly to Triton avenue, to West Sixth street, to the intersection of West Sixth street and Shell Road, thence along Shell Road and McDonald avenue to Avenue U, to West street, to Avenue T, to East Second street, to Avenue P, to East Third street, to Avenue O, to East Fourth street, to Avenue N, to East Fifth street, to Avenue L, to Ocean Parkway, to Eighteenth avenue, to East Fifth street, to Fort Hamilton Parkway, to the intersection of Fort Hamilton Parkway, Prospect Park Southwest, Coney Island avenue and Parkside avenue at Park Circle, thence along Parkside

avenue to Flatbush avenue, to Martense street, to Bedford avenue, to Snyder avenue, to Flatbush avenue, thence southerly along Flatbush avenue to the intersection of Flatbush avenue, Foster avenue and Bedford avenue, thence along Bedford avenue to Glenwood Road, to East Twenty-third street, to Campus Road, thence westerly, southerly, and asterly along Campus Road, to East Twenty-third street, to Avenue I, to East Twenty-fourth street, to Avenue J, to East Twenty-third street, to Avenue K, to East Twenty-fourth street, to Avenue N, to East Twenty-third street, to Olean street, to East Twenty-fourth street, to Voorhies avenue, to East Twenty-third street, to Shore Parkway, to Bedford avenue, thence southerly along Bedford avenue and Bedford avenue extended to the waters of Sheepshead Bay and through the waters of Sheepshead Bay, Rockaway Inlet and the Atlantic Ocean to the place of beginning.

Eighteenth. The eighteenth senate district shall consist of that part of the county of Kings within and bounded by a line beginning at a point where Johnson avenue intersects the dividing line between the county of Kings and the county of Queens, thence westerly along Johnson avenue to Porter avenue, to Flushing avenue, to the intersection of Flushing avenue, Irving avenue and Melrose street, thence westerly along Melrose street to Wilson avenue, to Jefferson street, to Evergreen avenue, to Jefferson street, to Bushwick avenue, to Troutman street, to Myrtle avenue, to Throop avenue, to Vernon avenue, to Tompkins avenue, to Willoughby avenue, to Nostrand avenue, to Willoughby avenue, to Bedford avenue, to De-Kalb avenue, to the intersection of De Kalb avenue and Fulton street, thence along Fulton street to Duffield street (Fifty-ninth street), to Willoughby street, to Bridge

street, to Tillary street, to Duffield street (Fifty-ninth street), to Concord street, to Bridge street, to Prospect street, to Jay street, to Talman street, to Bridge street, thence northerly along Bridge street and Bridge street extended to the waters of the East River and northerly through the waters of the East River to the waters of Newtown Creek and the dividing line between the county of Kings and the county of Queens, thence southerly along said dividing line to the place of beginning.

Nineteenth. The nineteenth senate district shall consist of the county of Richmond.

Twentieth. The twentieth senate district shall consist of that part of the county of New York within and bounded by a line beginning at the point where East Forty-first street extended intersects the waters of the East River, thence westerly along East Forty-first street extended and East Forty-first street to First avenue, to East Fortieth street, to Third avenue, to East Thirty-third street, to Lexington avenue, to East Twenty-sixth street, to Third avenue, to East Tenth street, to Fourth avenue, to Wanamaker Place at East Ninth street, thence easterly along East Ninth street to Third avenue, thence southerly along Third avenue and through Cooper Square to the Bowery, thence along the Bowery to East Fourth street, to Lafayette street, to Houston street, thence westerly along Houston street and West Houston street to Hudson street, to the intersection of Hudson street and Eighth avenue at Abingdon Square, thence along Eighth avenue to West Fourteenth street, to Seventh avenue, to West Twenty-fourth street, to Eighth avenue, to West Thirty-first street, to Seventh avenue, to West Thirty-fourth street, to Eighth avenue, to West Thirty-eighth street, to Seventh avenue, to West Thirty-ninth street, to

Eighth avenue, to West Fortieth street, to Seventh avenue, to West Fiftieth street, to Avenue of the Americas, to West Fifty-fourth street, to Eighth avenue, to West Fifty-fifth street, to Ninth avenue, thence along Ninth avenue and Columbus avenue to West Sixty-first street, to Central Park West, thence northerly along Central Park West to Cathedral Parkway at West One Hundred and Tenth street, thence easterly along Cathedral Parkway and West One Hundred and Tenth street to Fifth avenue, to East One Hundredth street, to Madison avenue, to East Ninety-eighth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Ninety-fourth street, to Third avenue, to East Eighty-ninth street, to Lexington avenue, to East Eighty-seventh street, to Third avenue, to East Eighty-fourth street, to Lexington avenue, to East Eighty-second street, to Third avenue, to East Eightieth street, to Second avenue, to East Seventy-fifth street, to First avenue, to East Seventy-fourth street, to York avenue, thence northerly along York avenue to East Eighty-second street, to East End avenue, to East Eighty-fourth street and Gracie Square, thence easterly along Gracie Square and Gracie Square extended to the waters of the East River and southerly through the waters of the East River to the place of beginning; including Welfare Island.

Twenty-first. The twenty-first senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where West One Hundredth street extended intersects the waters of the Hudson River, thence easterly along West One Hundredth street extended and West One Hundredth street to West End avenue, to West One Hundred and First street, to Broadway, to West One Hundred and Second street, to

Amsterdam avenue, to West Ninety-seventh street, to Central Park West, thence northerly along Central Park West and Eighth avenue to West One Hundred and Eighteenth street, to Lenox avenue, to West One Hundred and Seventeenth street thence along West One Hundred and Seventeenth street and East One Hundred and Seventeenth street to Madison avenue, to East One Hundred and Nineteenth street, to Park avenue, to East One Hundred and Twentieth street, to Madison avenue, to East One Hundred and Twenty-fourth street, to Fifth avenue, to East One Hundred and Twenty-fifth street, to Madison avenue, to East One Hundred and Twenty-seventh street, to Fifth avenue, to East One Hundred and Thirtieth street, to Madison avenue, to East One Hundred and Thirty-second street, to Fifth avenue, to West One Hundred and Thirty-fourth street, to Seventh avenue, to West One Hundred and Thirty-third street, to St. Nicholas avenue, to Edgecombe avenue, to West One Hundred and Thirty-seventh street, to St. Nicholas avenue, to West One Hundred and Fifty-second street, to Amsterdam avenue, to West One Hundred and Fifty-third street, to Broadway, to Fort Washington avenue, to West One Hundred and Sixty-first street, thence westerly along West One Hundred and Sixty-first street and West One Hundred and Sixty-first street extended to the waters of the Hudson River and southerly through the waters of the Hudson River to the place of beginning.

Twenty-second. The twenty-second senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East One Hundred and Thirty-fifth street extended intersects the waters of the Harlem River, thence westerly along East One Hundred and Thirty-fifth street extended and

East One Hundred and Thirty-fifth street to Madison avenue, to East One Hundred and Thirtieth street, to Fifth avenue, to East One Hundred and Twenty-seventh street, to Madison avenue, to East One Hundred and Twenty-fifth street, to Fifth avenue, to East One Hundred and Twenty-fourth street, to Madison avenue, to East One Hundred and Twentieth street, to Park avenue, to East One Hundred and Nineteenth street, to Madison avenue, to East One Hundred and Seventeenth street, thence westerly along East One Hundred and Seventeenth street and West One Hundred and Seventeenth street to Lenox avenue, to West One Hundred and Eighteenth street, to Eighth avenue, to Cathedral Parkway at West One Hundred and Tenth street, thence easterly along Cathedral Parkway and West One Hundred and Tenth street to Fifth avenue, to East One Hundredth street, to Madison avenue, to East Ninety-eighth street, to Park avenue, to East Ninety-sixth street, to Lexington avenue, to East Ninety-fourth street, to Third avenue, to East Eighty-ninth street, to Lexington avenue, to East Eighty-seventh street, to Third avenue, to East Eighty-fourth street, to Lexington avenue, to East Eighty-second street, to Third avenue, to East Eightieth street, to Second avenue, to East Seventy-fifth street, to First avenue, to East Seventy-fourth street, to York avenue, thence northerly along York avenue to East Eighty-second street, to East End avenue, to East Eighty-fourth street and Gracie Square, thence easterly along Gracie Square and Gracie Square extended to the waters of the East River, thence northerly through the waters of the East River and the Harlem River to the place of beginning; including Randall's Island, Ward's Island, Sunken Meadow Island and Mill Rocks Island.

Twenty-third. The twenty-third senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East One Hundred and Thirty-fifth street extended intersects the waters of the Harlem River, thence westerly along East One Hundred and Thirty-fifth street extended and East One Hundred and Thirty-fifth street to Madison avenue, to East One Hundred and Thirty-second street, to Fifth avenue, to West One Hundred and Thirty-fourth street, to Seventh avenue, to West One Hundred and Thirty-third street, to St. Nicholas avenue, to Edgecombe avenue, to West One Hundred and Thirty-seventh street, to St. Nicholas avenue, to West One Hundred and Fifty-second street, to Amsterdam avenue, to West One Hundred and Fifty-third street, to Broadway, to Fort Washington avenue, to West One Hundred and Sixty-first street, thence westerly along West One Hundred and Sixty-first street and West One Hundred and Sixty-first street extended to the waters of the Hudson River, thence northerly through the waters of the Hudson River to the Harlem River and the dividing line between the county of New York and the county of Bronx, thence easterly and southerly along said dividing line as it winds and turns to the place of beginning.

Twenty-fourth. The twenty-fourth senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where East Forty-first street extended intersects the waters of the East River, thence westerly along East Forty-first street extended and East Forty-first street to First avenue, to East Fortieth street, to Third avenue, to East Thirty-third street, to Lexington avenue, to East Twenty-sixth street, to Third avenue, to East Tenth street, to Fourth

avenue, to Wanamaker Place at East Ninth street, thence easterly along East Ninth street to Third avenue, thence southerly along Third avenue and through Cooper Square to the Bowery, thence along the Bowery to East Fourth street, to Lafayette street, to Houston street, thence westerly along Houston street and West Houston street to Hudson street, to Bethune street, to Greenwich street, to West Twelfth street, to Hudson street, to Horatio street, to Washington street, to West Fourteenth street, to Tenth avenue, thence southerly along Tenth avenue to Bloomfield street thence westerly along Bloomfield street and Bloomfield street extended to the waters of the Hudson River, thence through the waters of the Hudson River, Upper Bay, Buttermilk Channel and the East River to the place of beginning; including Ellis Island, Governor's Island and Bedloe's Island.

Twenty-fifth. The twenty-fifth senate district shall consist of that part of the county of New York within and bounded by a line beginning at a point where Bloomfield street extended intersects the waters of the Hudson River, thence easterly along Bloomfield street extended and Bloomfield street to Tenth avenue, to West Fourteenth street to Washington street, to Horatio street, to Hudson street, to West Twelfth street, to Greenwich street, to Bethune street, to Eighth avenue, to West Fourteenth street to Seventh avenue, to West Twenty-fourth street, to Eighth avenue, to West Thirty-first street, to Seventh avenue, to West Thirty-fourth street to Eighth avenue, to West Thirty-eighth street, to Seventh avenue, to West Thirty-ninth street, to Eighth avenue to West Fortieth street, to Seventh avenue, to West Fiftieth street, to Avenue of the Americas, to West Fifty-fourth street to Eighth avenue, to West Fifty-fifth street, to Ninth avenue, thence

along Ninth avenue and Columbus avenue to West Sixty-first street, to Central Park West, thence northerly along Central Park West to West Ninety-seventh street, to Amsterdam avenue, to West One Hundred and Second street, to Broadway, to West One Hundred and First street, to West End avenue, to West One Hundredth street, thence westerly along West One Hundredth street and West One Hundredth street extended to the waters of the Hudson River and southerly through the waters of the Hudson River to the place of beginning.

Twenty-sixth. The twenty-sixth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where St. Ann's avenue extended intersects Bronx Kills in the Harlem River, thence northerly along St. Ann's avenue extended and St. Ann's avenue to East One Hundred and Forty-seventh street, to Brook avenue, to East One Hundred and Fifty-sixth street, to Third avenue, to East One Hundred and Fifty-eighth street, to Brook avenue, to East One Hundred and Fifty-ninth street, to St. Ann's avenue, to the intersection of St. Ann's avenue, Third avenue and Boston Road, thence along Boston Road to the intersection of Boston Road, Jefferson Place and Crotona avenue, thence along Crotona avenue to East One Hundred and Seventieth street, to Clinton avenue, to Crotona Park South, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Third avenue, to East Tremont avenue, thence westerly along East Tremont avenue and West Tremont avenue to the Harlem River and southerly through the waters of the Harlem River to the place of beginning.

Twenty-seventh. The twenty-seventh senate district shall consist of that part of the county of Bronx within

and bounded by a line beginning at a point where St. Ann's avenue extended intersects Bronx Kills in the Harlem River, thence northerly along St. Ann's avenue extended and St. Ann's avenue to East One Hundred and Forty-seventh street, to Brook avenue, to East one Hundred and Fifty-sixth street, to Third avenue, to East One Hundred and Fifty-eighth street, to Brook avenue, to East One Hundred and Fifty-ninth street, to St. Ann's avenue, to the intersection of St. Ann's avenue, Third avenue and Boston Road, thence along Boston Road to the intersection of Boston Road, Jefferson Place and Crotona avenue, thence along Crotona avenue to East one Hundred and seventieth street, to Clinton avenue, to Crotona Park South, to Fulton avenue, to East One Hundred and Seventy-fifth street, to Third avenue, to East Tremont avenue, thence southeasterly along East Tremont avenue to Bronx Park avenue, to East One Hundred and Eightieth street, to Morris Park avenue, thence southerly along Morris Park avenue and Morris Park avenue extended to East One Hundred and Seventy-seventh street, to Rosedale avenue, to East One Hundred and Seventy-second street, to Noble avenue, to Watson avenue, to the intersection of Watson avenue, Metcalf avenue and Sound View avenue at Ludlow Square, thence along Sound View avenue to Lafayette avenue, to Beach avenue, to Bronx River avenue, to Underhill avenue, thence along Underhill avenue and Underhill avenue extended to the East River and westerly through the waters of the East River to the place of beginning; including Riker's Island, North Brother Island and South Brother Island.

Twenty-eighth. The twenty-eighth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where West

Tremont avenue extended intersects the Harlem River, thence easterly along West Tremont avenue extended, West Tremont avenue and East Tremont avenue to Bronx Park avenue, to East One Hundred and Eightieth street, to Morris Park avenue, thence northerly along Morris Park avenue to Amethyst street, to Rhinelander avenue, to Amethyst street, to Sagamore street, to Unionport Road, to the intersection of Unionport Road, Bronx Park East and Bronxdale avenue, thence along Bronxdale avenue to Cruger Avenue, to Brady avenue, to Bogart avenue, to Woodmansten Place, to Paulding avenue, to Westchester Esplanade, and thence northerly along Westchester Esplanade to Bronx and Pelham Parkway, to the intersection of Bronx and Pelham Parkway, Williamsbridge Road and Laconia avenue, thence along Laconia avenue to Mace avenue, to Ten Broeck avenue, to Allerton avenue, to Throop avenue, to Adee avenue, to Bouck avenue, to Burke avenue, to Yates avenue, to Boston Road, to Burke avenue, to Cruger avenue, to Magenta street, to Holland avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Olinville avenue, to Duncomb street and Duncomb street extended to Bronx River Parkway, thence southerly along Bronx River Parkway to East Two Hundred and Fourth street extended, thence westerly along East Two Hundred and Fourth street extended and East Two Hundred and Fourth street to Webster avenue, to East One Hundred and Ninety-ninth street, to Decatur avenue, to East Two Hundred and First street, to Marion avenue, to Bedford Park Boulevard, thence along Bedford Park Boulevard to Villa avenue, to East Two Hundred and Fourth street, thence easterly along East Two Hundred and Fourth street to East Mosholu Parkway South, thence southerly to Bainbridge avenue, thence along Bainbridge avenue and

East Two Hundred and Fifth street to Hull avenue, to East Two Hundred and Ninth street, to Decatur avenue, to Gun Hill road, thence westerly along Gun Hill Road to Jerome avenue, to West Mosholu Parkway North, to West Gun Hill Road, thence westerly along West Gun Hill Road and Van Cortlandt Park South to Major Deegan Expressway, to West Two Hundred and Thirty-ninth street, to Broadway, to West Two Hundred and Tirty-eighth street, to Bailey avenue, to Major Deegan Expressway (Albany Crescent), to West Two Hundred and Thirty-first street, to Bailey avenue, to West Kingsbridge Road, thence westerly along West Kingsbridge Road to the dividing line between the county of New York and the county of Bronx, thence southerly along said dividing line and through the Harlem River to the place of beginning.

Twenty-ninth. The twenty-ninth senate district shall consist of that part of the county of Bronx within and bounded by a line beginning at a point where Underhill avenue extended intersects the East River, thence along Underhill avenue extended and Underhill avenue to Bronx River avenue to Beach avenue, to Lafayette avenue, to Sound View avenue, thence along Sound View avenue through Ludlow Square to the intersection of Metcalf avenue, Sound View avenue and Watson avenue, thence along Watson avenue to Noble avenue, to East One Hundred and Seventy-second street, to Rosedale avenue, to East One Hundred and Seventy-seventh street, to Morris Park avenue extended, thence along Morris Park avenue extended to Morris Park avenue to Amethyst street, to Rhinelander avenue, to Amethyst street, to Sagamore street, to Unionport Road, to the intersection of Unionport Road, Bronx Park East and Bronxdale avenue, thence along Bronxdale avenue to Cruger avenue, to

Brady avenue, to Bogart avenue to Woodmansten Place, to Paulding avenue, to Westchester Esplanade, and thence northerly along Westchester Esplanade to Bronx and Pelham Parkway, to the intersection of Bronx and Pelham Parkway, Williamsbridge Road and Laconia avenue, thence along Laconia avenue to Mace avenue, to Ten Broeck avenue, to Allerton avenue, to Throop avenue, to Adee avenue, to Bouck avenue, to Burke avenue, to Yates avenue, to Boston Road, to Burke avenue, to Cruger avenue, to Magenta street, to Holland avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Olinville avenue, to Duncomb street and Duncomb street extended to the Bronx River Parkway, thence southerly along Bronx River Parkway to East Two Hundred and Fourth street extended, thence westerly along East Two Hundred and Fourth street extended and East Two Hundred and Fourth Street to Webster avenue, to East One Hundred and Ninety-ninth street, to Decatur avenue, to East Two Hundred and First street, to Marion avenue, to Bedford Park Boulevard, thence along Bedford Park Boulevard to Villa avenue, to East Two Hundred and Fourth street, thence easterly along East Two Hundred and Fourth street to East Mosholu Parkway South, thence southerly to Bainbridge avenue, thence along Bainbridge avenue and East Two Hundred and Fifth street to Hull avenue, to East Two Hundred and Ninth street, to Decatur avenue, to Gun Hill Road, thence westerly along Gun Hill Road to Jerome avenue, to West Mosholu Parkway North, to West Gun Hill Road, thence westerly along West Gun Hill Road and Van Courtlandt Park South to Major Deegan Expressway, to West Two Hundred and Thirty-ninth street, to Broadway, to West Two Hundred and Thirty-eighth street, to Bailey avenue, to Major Deegan

Expressway (Albany Crescent) to West Two Hundred and Thirty-first Street, to Bailey avenue, to West Kingsbridge Road, thence westerly along West Kingsbridge Road to the dividing line between the county of New York and the county of Bronx, thence northerly and westerly along said line as it winds and turns to the Harlem River and westerly through the waters of the Harlem River to the Hudson River, thence northerly through the waters of the Hudson River to the Bronx-Westchester county line and easterly along said line to the waters of Long Island Sound, thence southerly through the waters of Long Island Sound and the East River to the place of beginning; including City Island, Hunter's Island, Hart Island, Twin Island, High Island, Middle Reef Island, Rat Island, The Blauzes, Chimney Sweeps, Cuban Ledge, Big Tom, Green Flats, Hog Island, East Nonations, South Nonations, and all other islands in Long Island Sound within the boundary line of the county of Bronx.

Thirtieth. The thirtieth senate district shall consist of that part of Westchester county comprising the town of Pelham, town of Rye, town of Mamaroneck, and the city of New Rochelle, city of Rye, and that portion of the city of Mount Vernon described as follows:

Beginning at the intersection of Mount Vernon avenue with the boundary line between the city of Yonkers and the city of Mount Vernon, thence easterly along Mount Vernon avenue to North Terrace avenue, to Oak street, to North High Street, to Elm street, to West Lincoln avenue, to Howard street, to North High street, to William street, to North Terrace avenue, to West Broad street and westerly along West Broad street to the boundary line between the city of Mount Vernon and the city of Yonkers, thence northerly, easterly, southerly, westerly and north-

erly along the city line of the city of Mount Vernon to the place of beginning.

Thirty-first. The thirty-first senate district shall consist of that part of Westchester county comprising the town of Bedford, town of Cortlandt, town of Harrison, town of Lewisboro, town of Mount Pleasant, town of Newcastle, town of North Castle, town of North Salem, town of Ossining, town of Poundridge, town of Somers, town of Yorktown, town of Scarsdale, town of Eastchester, city of Peekskill and that portion of the city of White Plains described as follows:

Beginning at the intersection of Alexander avenue with the boundary line between the city of White Plains and the town of Greenburgh, thence easterly along Alexander avenue to Chase avenue, to Lee avenue, to Putnam avenue, to Chatterton Parkway, to Hawley street, to Trenton avenue, to Whitney street, to Battle avenue, to Harding avenue, to Chatterton avenue, to Central avenue; to the intersection of Central avenue, Russell street and County Center Road, and thence along County Center Road to the boundary line between the city of White Plains and the town of Greenburgh, thence northerly, easterly, southerly, westerly and northerly along the city line of the city of White Plains to the place of beginning.

Thirty-second. The thirty-second senate district shall consist of that part of Westchester county comprising the city of Yonkers, town of Greenburgh and portions of the cities of Mount Vernon and White Plains, described as follows:

That portion of the city of Mount Vernon beginning at the intersection of Mount Vernon avenue with the boundary line between the city of Yonkers and the city of

Mount Vernon, thence along Mount Vernon avenue to North Terrace avenue, to Oak street, to North High street, to Elm street, to West Lincoln avenue, to Howard street, to North High street, to William street, to North Terrace avenue, to West Broad street and westerly along West Broad street to the boundary line between the city of Mount Vernon and the city of Yonkers, thence southerly along the city line of the city of Mount Vernon to the place of beginning.

Also that portion of the city of White Plains beginning at the intersection of Alexander avenue with the boundary line between the city of White Plains and the town of Greenburgh, thence easterly along Alexander avenue to Chase avenue, to Lee avenue, to Putnam avenue, to Chatterton Parkway, to Hawley street, to Trenton avenue, to Whitney street, to Battle avenue, to Harding avenue, to Chatterton avenue, to Central avenue, to the intersection of Central avenue, Russell street and County Center Road, and along County Center Road to the boundary line between the city of White Plains and the town of Greenburgh, thence westerly and southerly along the city line of the city of White Plains to the place of beginning.

Thirty-third. The thirty-third senate district shall consist of the counties of Orange and Rockland.

Thirty-fourth. The thirty-fourth senate district shall consist of the counties of Delaware, Greene, Sullivan and Ulster.

Thirty-fifth. The thirty-fifth senate district shall consist of the counties of Columbia, Dutchess and Putnam.

Thirty-sixth. The thirty-sixth senate district shall consist of the county of Albany.

Thirty-seventh. The thirty-seventh senate district shall consist of the counties of Rensselaer and Washington.

Thirty-eighth. The thirty-eighth senate district shall consist of the counties of Schenectady and Schoharie.

Thirty-ninth. The thirty-ninth senate district shall consist of the countries of Essex, Saratoga and Warren.

Fortieth. The fortieth senate district shall consist of the counties of Clinton, Franklin and St. Lawrence.

Forty-first. The forty-first senate district shall consist of the counties of Fulton, Hamilton, Herkimer and Montgomery.

Forty-second. The forty-second senate district shall consist of the county of Oneida.

Forty-third. The forty-third senate district shall consist of the counties of Lewis, Jefferson and Oswego.

Forty-fourth. The forty-fourth senate district shall consist of that part of the county of Onondaga within the city of Syracuse within and bounded by a line beginning at a point where Erie Boulevard intersects the east city line, thence westerly along Erie Boulevard to the easterly end of Lombard street, to Cherry street, to East Fayette street, to South Crouse avenue, to East Genesee street, to the intersection of East Genesee street and East Jefferson street, thence along East Jefferson street to the intersection of East Jefferson street and Montgomery street, thence along Montgomery street to East Onondaga street, to the intersection of West Onondaga street, South Clinton street and Gifford street, thence along Gifford street to South Wilbur avenue, to Tennyson avenue, to South Lowell avenue, to Tompkins street, to North Lowell avenue, to Ulster street, to West Fayette street, to Schuyler

street, to North Lowell avenue, to West Genesee street, to Emerson avenue, to Erie street, to Willis avenue, to Herkimer street, thence westerly along Herkimer street and Herkimer street extended to the west city line and northerly, easterly and southerly along said city line as it winds and turns to the place of beginning; together with the towns of Clay, Cicero, Camillus, Elbridge, Geddes, Lysander, Marcellus, Skaneateles, Salina and Van Buren.

Forty-fifth. The forty-fifth senate district shall consist of that part of the county of Onondaga within the city of Syracuse within and bounded by a line beginning at a point where Erie Boulevard intersects the east city line, thence westerly along Erie Boulevard to the easterly end of Lombard street, to Cherry street, to East Fayette street, to South Crouse avenue, to East Genesee street, to the intersection of East Genesee street and East Jefferson street, thence along East Jefferson street to the intersection of East Jefferson street and Montgomery street, thence along Montgomery street to East Onondaga street, to the intersection of West Onondaga street, South Clinton street and Gifford street, thence along Gifford street to South Wilbur avenue, to Tennyson avenue, to South Lowell avenue, to Tompkins street, to North Lowell avenue, to Ulster street, to West Fayette street, to Schuyler street, to North Lowell avenue, to West Genesee street, to Emerson avenue, to Erie street, to Willis avenue, to Herkimer street, thence westerly along Herkimer street and Herkimer street extended to the west city line and southerly, easterly and northerly along said city line as it winds and turns to the place of beginning; together with the towns of De Witt, Fabius, Lafayette, Manlius, Onondaga, Otisco, Pompey, Spafford, Tully; also the Onondaga Indian Reservation.

Forty-sixth. The forty-sixth senate district shall consist of the counties of Madison, Cortland, Chenango and Otsego.

Forty-seventh. The forty-seventh senate district shall consist of the county of Broome.

Forty-eighth. The forty-eighth senate district shall consist of the counties of Cayuga, Tompkins and Tioga.

Forty-ninth. The forty-ninth senate district shall consist of the counties of Steuben and Chemung.

Fiftieth. The fiftieth senate district shall consist of the counties of Wayne, Ontario, Seneca, Yates and Schuyler.

Fifty-first. The fifty-first senate district shall consist of that part of the county of Monroe within the city of Rochester within and bounded by a line beginning at a point where the Genesee River extended intersects the waters of Lake Ontario, thence southerly through the waters of the Genesee River to Avenue E, to Conkey avenue, to Avenue D, to Harris street, to Avenue A, to Gladys street, to Nielson street, to Harris street, to Clifford avenue, to Durgin street, to Evergreen street, to Conkey avenue, to Clifford avenue, to Clinton avenue North, to Westcott street, to St. Paul street, to Cumberland street, to Clinton avenue North, to Mortimer street, to Water street North, thence along Water street North and Water street South to Broad street, to the waters of the Genesee River and southerly through the waters of the Genesee River to Clarissa street, thence easterly along Clarissa street to Mt. Hope avenue, to Averill avenue, to South avenue, to Caroline street, to Goodman street South, to Richard street, to Wilcox street, to Monroe avenue, to

Canterbury Road, to Vassar street, to Harvard street, to Berkeley street, to Milburn street, to Culver Road, to Monroe avenue, to the city line, thence westerly, southerly and northerly along said city line as it winds and turns to the waters of Lake Ontario and through the waters of Lake Ontario to the Genesee River and the place of beginning; together with the towns of Chili, Clarkson, Gates, Greece, Henrietta, Hamlin, Ogden, Parma, Riga, Sweden, Wheatland and Rush.

Fifty-second. The fifty-second senate district shall consist of that part of the county of Monroe within the city of Rochester within and bounded by a line beginning at a point where the Genesee River extended intersects the waters of Lake Ontario, thence southerly through the waters of the Genesee River to Avenue E, to Conkey avenue, to Avenue D, to Harris street, to Avenue A, to Gladys street, to Nielson street, to Harris street, to Clifford avenue, to Durgin street, to Evergreen street, to Conkey avenue, to Clifford avenue, to Clinton avenue North, to Westcott street, to St. Paul street, to Cumberland street, to Clinton avenue North, to Mortimer street, to Water street North, thence along Water street North and Water street South to Broad street, to the waters of the Genesee River and southerly through the waters of the Genesee River to Clarissa street, thence easterly along Clarissa street to Mt. Hope avenue, to Averill avenue, to South avenue, to Caroline street, to Goodman street South, to Richard street, to Wilcox street, to Monroe avenue, to Canterbury Road, to Vassar street, to Harvard street, to Berkeley street, to Milburn street, to Culver Road, to Monroe avenue, to the city line, thence easterly and northerly along said city line as it winds and turns to the waters of Lake Ontario and through the waters of

Lake Ontario to the Genesee River and the place of beginning; including the towns of Brighton, Mendon, Penfield, Perinton, Pittsford, Webster and Irondequoit.

Fifty-third. The fifty-third senate district shall consist of the counties of Livingston, Allegany, Wyoming, Genesee and Orleans.

Fifty-fourth. The fifty-fourth senate district shall consist of the county of Niagara.

Fifty-fifth. The fifty-fifth senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Delaware avenue intersects the north city line, thence southerly along Delaware avenue to Hertel avenue, to Colvin avenue, to Linden avenue, to Delaware avenue, to Knox avenue, to Edgepark avenue, to Amherst street, to Meadow Road, to Middlesex Road, to Delaware avenue, to West Delevan avenue, to Main street, to Masten avenue, to Woodlawn avenue, to Chester street, to Glenwood avenue, to Masten avenue, to Laurel street, to Jefferson avenue, to Best street, to Herman street, to the intersection of Herman street, Genesee street and High street, thence along High street to Fox street, to Genesee street, to Monroe street, to Beckwith street, to Adams street, to Broadway, to Monroe street, to Peckham street, to Adams street, to Howard street, to Monroe street, to Clinton street, to Madison street, to East Eagle street, thence westerly along East Eagle street to Oak street, to Clinton street, to Ellicott street, to East Eagle street, to Main street, to Erie street, to Franklin street, to Church street, to the intersection of Church street, Upper and Lower Terrace and Mechanic street, thence along Lower Terrace to Charles street, to Perry Boulevard, to Erie street,

thence along Erie street and Erie street extended to the waters of Buffalo Harbor and northerly through the waters of Buffalo Harbor and the Niagara River to a point where the north city line extended intersects the waters of the Niagara River, thence easterly along said city line extended and said city line to the place of beginning, including Squaw Island and Bird Island Pier Park; together with the towns of Grand Island and Tonawanda; also including the city of Tonawanda.

Fifty-sixth. The fifty-sixth senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Delaware avenue intersects the north city line, thence southerly along Delaware avenue to Hertel avenue, to Covin Avenue, to Linden avenue, to Delaware avenue, to Knox avenue, to Edgepark avenue, to Amherst street, to Meadow Road, to Middlesex Road, to Delaware avenue, to West Delevan avenue, to Main street, to Masten avenue, to Woodlawn avenue, to Chester street, to Glenwood avenue, to Masten avenue, to Laurel street, to Jefferson avenue, to Best street, to Herman street, to the intersection of Herman street, Genesee street and High street, thence along High street to Fox street, to Genesee street, to Monroe street, to Beckwith street, to Adams street, to Broadway, to Monroe street, to Peckham street, to Emslie street, to William street, to Stanton street, to Peckham street, to Smith street, to Clinton street, to Babcock street, to Dorothy avenue, to Scoville avenue, to Clinton street, to Willet street, to Griswold street, to the east city line, thence northerly and westerly along said city line to the place of beginning; together with the town of Cheektowaga.

Fifty-seventh. The fifty-seventh senate district shall consist of that part of the county of Erie within the city of Buffalo within and bounded by a line beginning at a point where Griswold street intersects the east city line, thence westerly along Griswold street to Willet street, to Clinton street, to Scoville avenue, to Dorothy avenue, to Babcock street, to Clinton street, to Smith street, to Peckham street, to Stanton street, to William street, to Emslie street, to Peckham street, to Adams street, to Howard street, to Monroe street, to Clinton street, to Madison street, to East Eagle street, thence westerly along East Eagle street to Oak street, to Clinton street, to Ellicott street, to East Eagle street, to Main street, to Erie street, to Franklin street, to Church street, to the intersection of Church street, Upper and Lower Terrace and Mechanic street, thence along Lower Terrace to Charles street, to Perry Boulevard, to Erie street, thence along Erie street and Erie street extended to the waters of Buffalo Harbor and southerly through the waters of Buffalo Harbor and Lake Erie to a point where the south city line extended intersects the waters of Buffalo Harbor, thence easterly and northerly along said city line extended and said city line to the place of beginning; together with the city of Lackawanna and the towns of Amherst, Clarence, Newstead, Lancaster, Alden, West Seneca, Elma, Marilla, Hamburg, Orchard Park, Aurora, Wales, Evans, Eden, Boston, Colden, Holland, Brant, North Collins, Collins, Concord and Sardinia; also that part of the Cattaraugus Indian Reservation and that part of the Tonowanda Indian Reservation within the county of Erie.

Fifty-eighth. The fifty-eighth senate district shall consist of the counties of Chautauqua and Cattaraugus.

§ 122. Present assembly districts

The assembly districts of this state, as existing immediately before the enactment of this article, shall continue to be the assembly districts of the state until the expiration of the terms of the members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations and except for the election of delegates to a state or judicial district convention; members of a state committee, members of a county committee or any other party office or position, and any public office to be filled for a term or terms commencing on or after or to continue beyond January first, nineteen hundred fifty-five.

§ 123. Apportionment of members of assembly

Except as provided in section one hundred twenty-two, the number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

In the county of Albany, two.
In the county of Alleghany, one.
In the county of Bronx, twelve.
In the county of Broome, two.
In the county of Cattaraugus, one.
In the county of Cayuga, one.
In the county of Chautauqua, one.
In the county of Chemung, one.
In the county of Chenango, one.
In the county of Clinton, one.
In the county of Columbia, one.
In the county of Cortland, one.
In the county of Delaware, one.

In the county of Dutchess, one.
In the county of Erie, eight.
In the county of Essex, one.
In the county of Franklin, one.
In the counties of Fulton and Hamilton, one.
In the county of Genessee, one.
In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, one.
In the county of Kings, twenty-two.
In the county of Lewis, one.
In the county of Livingston, one.
In the county of Madison, one.
In the county of Monroe, four.
In the county of Montgomery, one.
In the county of Nassau, six.
In the county of New York, sixteen.
In the county of Niagara, two.
In the county of Oneida, two.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, thirteen.
In the county of Rensselaer, one.
In the county of Richmond, two.
In the county of Rockland, one.
In the county of St. Lawrence, one.
In the county of Saratoga, one.
In the county of Schenectady, one.

In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, one.
In the county of Suffolk, three.
In the county of Sullivan, one.
In the county of Tioga, one.
In the county of Tompkins, one.
In the county of Ulster, one.
In the county of Warren, one.
In the county of Washington, one.
In the county of Wayne, one.
In the county of Westchester, six.
In the county of Wyoming, one.
In the county of Yates, one.

§ 124. New assembly districts

The supervisors in each of the aforesaid counties, which are by the provisions of this article entitled to more than one member of assembly, shall meet on the fifteenth day of December nineteen hundred fifty-three, or on such other date as they shall determine but not later than the fifteenth day of March, nineteen hundred fifty-four at the place where their last meeting was held; organize by appointing one of their number as chairman and another as secretary; and proceed to divide such county into as many assembly districts as it is entitled to members of assembly. In any case where, prior to the effective date of this act, the supervisors of any such county have met on a date other than the fifteenth day of December, nineteen hundred fifty-three, organized and divided their county into assembly districts, all of the acts and proceedings of said supervisors in so meeting, organizing and

dividing such county into assembly districts are hereby validated, ratified and confirmed.

In order to facilitate the division of such counties into assembly districts, there shall be made available to the supervisors of such counties by the joint legislative committee on reapportionment created by the legislature by resolution adopted March twenty-ninth, nineteen hundred forty-nine and extended from time to time by resolutions duly adopted, information, data, statistics and maps in the possession of said joint legislative committee on reapportionment and pertinent to the division of such counties into assembly districts provided, however, that original maps prepared by the joint legislative committee on reapportionment and original data and statistics furnished the joint legislative committee on reapportionment by the United States bureau of the census shall at all times remain in the possession and under the control of the joint legislative committee on reapportionment. The accuracy of such information, data, statistics and maps shall be certified by the chairman of the joint legislative committee on reapportionment or by such member of said committee's staff as he may designate for that purpose.

The supervisors of each such county shall thereupon make a certificate in duplicate containing a description of each assembly district in the county, and specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the nineteen hundred fifty federal census.

In any city comprising one or more counties in which there is no board of supervisors, the members of the council of said city shall constitute a board for the division of the counties in such city into assembly districts; meet at the same time and in the same manner organize;

and make such divisions in said counties and certificates as boards of supervisors in other counties are required to do.

Each certificate shall be signed by a majority of such supervisors respectively, except in cities comprising one or more counties in which there is no board of supervisors, and in such cities by a majority of the council of each said city. The supervisors or councilmen shall cause duplicate certificates to be filed in the office of the secretary of state and in the office of the clerk of the respective counties.

In any case where, after the supervisors of a county or the members of the council of a city comprising one or more counties in which there is no board of supervisors have met but before they have completed the division of such county or counties into assembly districts, new supervisors or new members of the council of such city have been elected and have taken office, such new supervisors or new members of the council of such city shall meet, organize and shall complete the division of such county or counties into assembly districts and shall meet and sign the certificate or certificates as herein provided.

APPENDIX B

HISTORICAL SUMMARY OF PRIOR APPORTIONMENT PROVISIONS[1]

Four constitutions preceded the 1894 constitution containing the presently effective apportionment formula.[2]

The Constitution of 1777 established a Senate of 24 members, divided the State into four great senatorial districts and distributed the Senators among them, giving nine to the southern, six to the middle, six to the western and three to the eastern districts. The constitution provided for a census of Senate electors to be taken as soon as possible after the expiration of seven years following the end of the Revolutionary War and directed the legislature to reapportion the Senators among the districts so that the number of Senators would be "justly proportioned" to the number of electors in each district. N. Y. Const., Art. XII (1777).

The 1777 Constitution set the size of the Assembly at 70 and apportioned the 70 members among the various counties. N. Y. Const., Art IV (1777). As in the case of the Senate, the constitution also provided for a census of Assembly electors and directed the legislature to reapportion the Assemblymen among the counties so that the number of Assemblymen would be "justly proportioned" to the number of electors in each county. N. Y. Const. Art. V (1777).

In 1791, following the first census, the Senate districts were altered and the seats were reapportioned. N. Y. Sess. Laws 1791, ch. 4. The legislature was also author-

1. A detailed analysis of the history of New York's apportionment will be found in Silva, *Apportionment in New York*, 30 FORD. L. REV. 581, 597-603 (Senate) (1962); Silva, *Apportionment of the New York Assembly*, 31 FORD. L. REV. 1, 2-13 (1962).

2. See p. 24, fn. 12, *supra*, for a summary of the changes which have been made in the formula since 1894. None of these has made any basic change in the apportionment procedures.

ized to give an additional Senator to a district whenever a septennial census showed that the number of electors in that district had increased 1/24th part of the whole number of electors as established by the first census.[3] Consequently, after the second census, the Senate was increased to 43 members, the districts redrawn, and the Senators apportioned to the four newly constituted districts.

The Assembly was also reapportioned in 1791 and the legislature was authorized to give an additional Assemblyman to a county whenever a septennial census showed that the number of electors in that county had increased 1/70th part of the whole number of electors as established by the first census. Similarly, the legislature was empowered to deprive a county of one Assemblyman if that county's electors declined 1/70th part of the whole.[4]

In 1796, legislation was enacted providing for 38 additional Assemblymen making a total of 108. N. Y. Sess. Laws 1796, ch. 19.

In 1801, a constitutional amendment fixed the number of Senators at 32 and fixed the number of Assemblymen at 100 and directed the legislature to apportion the Senators among the four districts "as nearly as may be,

3. N. Y. Const., Art. XII (1777). Senate electors were "the freeholders of this State, possessed of Freeholds of the value of one hundred pounds over and above all Debts and Incumbrances thereon." 1 Lincoln, THE CONSTITUTIONAL HISTORY OF NEW YORK 516 (1906). See also Dougherty, CONSTITUTIONAL HISTORY OF THE STATE OF NEW YORK 50-51 (2d rev. ed. 1915).

4. N. Y. Const., Art. V (1777). Assembly electors included all freemen in the cities of New York and Albany, owners of freeholds valued at twenty pounds or more, and tenants who paid an annual rent of at least forty shillings. N. Y. Const., Art. VII (1777).

according to the number of electors qualified to vote for Senators" and to apportion the 100 Assembly seats among the counties as nearly as may be, according to the number of their respective electors. This amendment further provided that the number of Assemblymen should be increased at the rate of 2% per year until there was a total of 150 members.

Study of the first constitution, the amendment of 1801, and the 6 apportionment acts passed thereunder shows that the legislature did not divide a multi-member county into Assembly districts. A county entitled to more than one Assemblyman served as one multi-member district, in which all of the county's Assemblymen were elected at large. 3 Lincoln, THE CONSTITUTIONAL HISTORY OF NEW YORK 152-159 (1906). The legislature also created a number of joint districts composed of "two" but never more than "two" counties.

The Constitution of 1821 continued the number of Senators at 32 but increased the number of Senatorial districts from 4 to 8, and, by assigning 4 seats to each district, deprived the legislature of its authority to apportion Senators among the districts. N. Y. Const., Art. I, §5 (1821). This was apparently designed to limit the temptation of the gerrymander. See Griffith, THE RISE AND DEVELOPMENT OF THE GERRYMANDER 97, 123 (1907). The legislature was authorized, however, to redistrict at the first session after each decennial census so "that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, paupers, and persons of colour not taxed". N. Y. Const., Art. I, §6 (1821).

The 1821 Constitution provided three new rules for Assembly apportionment. First, by stating that members

of the Assembly shall be chosen by counties, the second constitution at least implied that no county could be combined with another to form a joint district. Although Hamilton was combined with Montgomery under the apportionments of 1822, 1826 and 1836 and with Fulton under the apportionment of 1846, every other county enjoyed separate representation while the constitution of 1821 was in force. Second, although no other county could be created unless its population was sufficient to entitle it to an Assemblyman, every existing county was guaranteed one Assemblyman regardless of how much its representative population might fall below the ratio. The size of the Assembly was frozen at 128 members.

The Constitution of 1821 also changed the basis of representation for both the Senate and Assembly from electors to "inhabitants, excluding aliens, paupers, and persons of colour, not taxed". The legislature was directed to apportion the 128 seats among the various counties on the basis of the federal census of 1820, but the constitution provided that a state enumeration should be made in 1825 and every 10 years thereafter. At its first session after the return of each decennial enumeration, the legislature had the duty of reapportioning the 128 seats among the several counties, "as nearly as may be, according to the numbers of their respective [representative] inhabitants." N. Y. Const., Art. 1, §7 (1821). These constitutional provisions for Assembly apportionment remained in force with only minor modifications until superseded by the Constitution of 1894.

The legislature passed three laws redistricting the Senate under the second constitution, one in 1826, one in 1836 and another in 1846. From the standpoint of population as a basis of representation, the Senate dis-

tricts were drawn quite equitably—probably as equitably as possible since the districts had to be composed of contiguous territory and since counties could not be split between districts. While these two rules may have limited or prevented gerrymandering, they also prevented the legislature from creating districts that were precisely equal in population. As in the case of the prior constitution, there seems to have been no discrimination against the downstate districts in favor of the more rural areas. See Silva, *Apportionment in New York*, 30 FORD. L. REV., 581, 600, fn. 112.

The Constitution of 1846 departed from the then traditional rule by providing for a single-member rather than multi-member districts.

With respect to the Assembly, the Constitution of 1846 expressly provided for combining Hamilton with Fulton in a joint district until Hamilton County's representative population became equal to the ratio, which was obtained by dividing the State's representative population by 128. An amendment adopted in 1847 broadened the basis of representation to "inhabitants, excluding aliens", and transferred the power to divide New York City into Assembly districts from the New York County Board of Supervisors to the New York City Board of Aldermen.

Although the 1846 constitution provided that each Senatorial district should contain, as nearly as may be, an equal number of representative inhabitants, there were greater population differences between the districts created by these statutes than there had been under previous constitutions. See Silva, *Apportionment in New York*, 30 FORD. L. REV. at 601, fn. 119. These population differences, however, resulted from districting rather than from malapportionment.

The variations between the populations of Senate districts under the constitutions preceding that of 1894 were not especially severe nor did they consistently operate to the disadvantage of one particular area or group of voters. For example, under the apportionments enacted pursuant to the 1821 Constitution, the ratio between the highest and lowest population-per-seat figure never exceeded 1.2 to 1. Under the 1846 constitutional provisions, this ratio ranged from 1.5 to 1 to 1.8 to 1. By contrast, the present constitution has produced variations of up to 2.3 to 1, and will, in the pending apportionment, produce a variation of at least 2.5 to 1.

The disparities in the Assembly too, in the earlier years, did not approach those of recent decades. Under the apportionment of 1791, for instance, the ratio between the extreme figures was only 2.2 to 1. Under the pending apportionment, on the other hand, this ratio will be 12.7 to 1.

APPENDIX C

The Constitutional Convention of 1894

The record of proceedings of the Constitutional Convention of 1894 confirms what is evident from both the language of the apportionment formulae adopted by that convention and the consequences thereof—that it was the purpose and intent of the convention to discriminate in the apportionment of the legislature against urban residents, specifically those in New York and Kings counties (which counties then comprised New York City). For example, speaking in favor of the Senatorial apportionment formula, Henry J. Cookinham, delegate from Utica, stated:

> "• • • I say without fear of contradiction, successful contradiction, that the average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government, to the average citizen of the great cities. • • • I know what the culture of the great cities is. But I know, furthermore, that the lower strata of society in the great cities is such that when the balance is struck, and the average citizen is produced, he is not a citizen so well worthy of confidence as the average citizen in the rural districts. The stream will never be purer than the fountain, and the government is founded upon the average citizen and not the cultured and wealthy classes.
>
> "If, then, the average citizen in the rural districts is a superior citizen to the average citizen of the great cities, your government will be better, your government will be safer in his hands than in the hands of the average citizen of the great cities. • • • I tell you, gentlemen, you who represent that great city, that when that time comes, when your streets are filled with those who defy the law, when

> socialists, when those who believe in no government, are parading your streets and destroying your property and killing your citizens, then you will cry for help. And to whom? You will then turn your eyes to the green fields of Oneida and Herkimer and Jefferson and St. Lawrence. You will call to us, who have no Emma Goldburgs and no Herr Mosts, and you will expect us to respond to the call, and we will * * *." 4 REVISED RECORD OF THE CONSTITUTIONAL CONVENTION OF 1894 OF THE STATE OF NEW YORK, pp. 10-11 (1900) (hereafter cited "REV. REC.")*.

Edward Lauterbach (delegate at large) urged:

> "* * * that not only the population composed of many who were unfitted for citizenship but territory upon which live thousands of men not as great in number, but of greater force and power, and greater intellect, should also be represented; and that is the scheme of this apportionment. * * *" *Id.* at p. 87.

Tracy C. Becker, Chairman of the Committee on Legislative Organization on Reapportionment of Senate and Assembly Districts, delegate from Buffalo, explained the work of the Committee as follows:

> "* * * we have provided so that this vast influx of population, a very large proportion of which comes by immigration into our great cities of the State, while it will not be below its representation on the basis of the city being a political entity, a business entity, a commercial entity, will at the same time not injustly and wrongfully affect the representation of the rural districts, where there are several counties, each one of them equally a business entity, a political entity, a commercial entity, with any of the great city counties, and deprive those counties of their just and full representation" (3 REV. REC. 1000).

*For a 1962 version of the foregoing viewpoint, see p. 42, fn. 33, *supra*.

Delegate George H. Bush, from Ulster, protested that:

> "* * * it is openly stated by the majority of the committee that the purpose of the committee was to prevent the cities from getting the apportionment to which they were entitled, and to give it to the country districts, and this work does it beautifully. * * *"
> * * * So that you see, under this beautiful scheme, which seeks nothing but fairness, that while 35,500 population elect a Republican Member of Assembly, it takes 40,566 to elect a Democratic Member of Assembly; and yet, there is nothing of the gerrymander about it, and it is put into the Constitution to prohibit wicked Legislatures from ever gerrymandering the State, * * *" (3 Rev. Rec. p. 1009.)

The Assembly

The Constitution of 1894 divided the counties into three classes with respect to Assembly reapportionment. N. Y. Const., Art. III, §5; see pp. 30-31, *supra*. The division of counties into three groups according to population was originally proposed by Edward Lauterbach, 3 Lincoln, The Constitutional History of New York, 211 (1906), who made explicit at the Convention his view that the cities contained "many who were unfitted for citizenship". See p. 132, *supra*.

The three-class scheme was defended by John I. Gilbert (delegate at large) who argued that the cities have "an undue preponderance in the Legislature". 3 Rev. Rec. 1074.

Delegate DeLancey Nicoll of New York City attacking the system, pointed to the:

> "* * * ingenious classification and division of counties for the purpose of maintaining the prestige of the agricultural districts and subordinating the population to territorial representation * * *." 4 Rev. Rec. 15.

William C. Osborn said that each of the rules of Assembly apportionment had been proposed in order to "maintain the present balance and preponderance of the rural counties of this state against the city". 3 Lincoln, *supra*, at 224.

The measure relating to apportionment of the Assembly was amended by Charles Z. Lincoln, delegate from Little Valley, and was passed by the Convention in the form found in the Constitution today. 4 Rev. Rec. 675, 694; 5 Rev. Rec. 743.

The Senate

The rule that "no county shall have four or more senators unless it shall have a full ratio for each senator" (see p. 29, *supra*) is derived from the proposal introduced by Elron R. Brown of Jefferson County, 3 Lincoln, *supra*, at pp. 215-216, as amended by the clause recommended by the Chairman of the Committee on Legislative Organization, Tracy C. Becker. 4 Rev. Rec. 61. The Committee on Legislative Organization changed Brown's proposal so that it read:

> "An additional Senator shall not be apportioned to any county on less than one-half the ratio, nor shall an additional Senator be apportioned to any county on less than the full ratio when the average number of inhabitants, excluding aliens, in the districts in such county would not otherwise be one-tenth more than the ratio." 4 Rev. Rec. 56-57.

Stephen S. Blake of New York City objected to the one-tenth rule and argued that:

> "They have, in order to prevent New York and Kings from ever * * * obtaining a fraction of the rights of which they have been thus robbed, cunningly contrived [the rule] * * *." 3 Rev. Rec. 1178.

Delegate John I. Gilbert argued in support of the proposal:

> "* * * it would be a sad day * * * when that city (New York) and the city of Brooklyn, if they should be united, should have one-half of the representation in the Legislature of the State * * * the coming of that day, if it should ever come, would be to the disadvantage of the best interests of the State of New York." 4 REV. REC. 93-94.

The Brown plan with the Becker amendment to the clause adopted by the Committee was designed to limit the Senatorial representation of New York and Kings counties by preventing the apportionment of Senators on fractions to all counties having more than three ratios and is essentially the form found in the constitution today. See App. A, p. 78 *supra*.

Almet F. Jenks, delegate from Brooklyn, stated to the assembled delegates that:

> "* * * We ask simply that every man in the State have equal representation. * * * Every man in the State that has less representation, or right of representation, than any other, is deprived of his inherent right." *Id.* at pp. 28-29.

Becker had proposed that:

> "Every county having four or more senators shall have a full ratio for each senator. * * *" *Id.* at p. 61.

This substitution was made in response to objections of John I. Gilbert and others who feared that the large cities would have undue representation in the legislature. Delegate Gilbert had argued that:

> "I cannot look with complacency upon the fact that a little territory in the southern part of the State is likely to have in the near future a preponderance in the legislation of this State." 3 REV. REC. 1075.

After a discussion of the effect that the original Becker amendment would have on the proposed consolidation of New York, Kings, Richmond, and parts of Queens and Westchester, 4 REV. REC. 82-83, Charles Z. Lincoln proposed a change which was supposed to avoid embarrassing New York and Brooklyn and which provided that:

> "No county shall have more than one-third of all the Senators, and no two counties of the territory thereof as now organized, which are adjoining counties or which are separated only by public waters, shall have more than half of all the Senate." *Id.* at p. 357.

The effect that these latter two limitations might have on New York City's representation did not pass unnoticed. Wright Holcomb, delegate from New York City, argued against the Lincoln amendment:

> "This is not the result of chance, but the work of design. The proof of that is conclusive. In the cities the representation is less than the proportion of voting population, and in the rural districts it is greater. This is because the former are Democratic and the latter are Republican. It is even provided that no city shall ever have more than a third of the number of Senators, though its population might entitle it to half. This is aimed at New York, which is a rapidly growing city with a large Democratic majority." *Id.* at p. 361.

Delegate Jenks pointed out that:

> "* * * never can the population of those two cities (New York and Brooklyn) have representation of

> the individuals; in other words, you are writing into your Constitution a limitation upon the representation of the person, and you are virtually providing for taxation without representation." *Id.* at p. 375.

Gilbert protested that the Brown-Becker-Lincoln amendment provided for a possible contingency in which the cities of New York and Brooklyn would have representation in the legislature equal to the entire balance of the State, and that the proposal was therefore inadequate. 4 REV. REC. 374.

Elihu Root argued that New York City's limited representation was justified because "representatives from one city * * * represent not, in fact, their separate districts, but the whole city * * * were responsible to the same political organization * * * represented but one combined interest of the citizens of that city * * * [this amendment] goes but a small ways towards equalization." 3 REV. REC. 1224.

Stephen S. Blake, delegate from New York City, asserted that:

> "* * * your committee proposes to cheat the cities of their fair and just representation by the sophistical and dishonest plea that each Senator from one of these counties represents in a broad sense—in a broad sense, mark you the word, sir—in a broad sense the county, and, therefore, the rule works no injustice. * * *". 3 REV. REC. 1174-75.

Lincoln's proposed amendment was adopted by the Convention by a vote of 90 to 50, 4 REV. REC. 376, and today embodies two of the three mandatory rules on the apportionment of Senators to be found in the Constitution. N. Y. Const. Art. III, §4.

The Constitution now provides that: "The senate shall consist of fifty members, except as hereinafter provided * * *." N. Y. Const., Art. III, §2. The increase in the Senate size from 32 (see p. 126, *supra*) to a minimum of fifty members was recommended by the Committee on Legislative Organization. 5 Rev. Rec. 711. George H. Bush, delegate from Ulster, opposed this increase. 3 Rev. Rec. 1007. He noted that:

> "* * * The political division under this (50 member senate) will give about twenty-eight or twenty-nine Republicans to twenty-one or twenty-two Democrats. And know you now why they take fifty * * *." *Id.* at p. 1008.

Bush indicated an awareness of the unfairness to New York City inherent in the proposals by Becker and Lincoln, which are now contained in Art. III, § 4 of the Constitution. App. A, *supra*, p. 76.

Bush pointed out:

> "(The proposal) will not, in any way, change the county districts. In other words, this scheme contemplates simply that the present apportionment may always remain, but you may add on to a district when it has sufficient to give it another Senator * * *. The effect, then, is to substitute government by the Republican party for a republican form of government * * * and, in effect, have said that a majority of the people shall no longer rule the State of New York." 4 Rev. Rec. 648-649.

Delegate Mulqueen from New York City argued:

> "The workingmen and women of the State reside principally in the cities and you are arranging the Senate and Assembly districts so that the country

> will control the cities and so that a minority of the people will enact laws for the government of the majority * * *. The basis of representation should be population and not land. And we do not hesitate to say that you are not doing justice to the cities * * *." *Id.* at pp. 23-25.

Delegate Jenks complained that:

> "* * * he (Mr. Lincoln) seeks to bring back into the policy of this State representation by the rotten borough system * * *." *Id.* at p. 28.

It is, perhaps, Delegate Bush who best characterized the disillusionment of the urban delegates in the proceedings of the 1894 Constitutional Convention when he predicted:

> "In case this should be adopted, a new principle is injected into the law-making power of the State, and henceforth the acres of the Adirondack wilderness will vote in the halls of the Legislature against the population of the great cities of the State." *Id.* at p. 691.

LIBRARY
SUPREME COURT, U. S.

No. 20

Office-Supreme Court, U.S.
FILED
SEP 7 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. M[illegible]CAFFERTY,

Appellants,

v.

CAROLINE K. SIMON, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; PAUL R. SCREVANE, President of the City Council of the City of New York; EUGENE H. NICKERSON, Chairman, Board of Supervisors, Nassau County; LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County; ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County; DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF EUGENE H. NICKERSON, CHAIRMAN, BOARD OF SUPERVISORS, NASSAU COUNTY, APPELLEE, IN SUPPORT OF APPELLANTS

BERTRAM HARNETT,
County Attorney of Nassau County,
Nassau County Executive Building,
Mineola, New York,
Attorney for Eugene H. Nickerson, Appellee.

JACK B. WEINSTEIN,
of Counsel.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8151

INDEX

	PAGE
Opinions Below	1
Jurisdiction	2
Provisions of United States Constitution, Federal Statutes and State Constitution and Statutes Involved	2
Question Presented	2
Statement	3
A. Position of Appellee, Eugene H. Nickerson	3
B. Basis for Decision Below	4
Introduction and Summary of Argument	5
I. There is gross and invidious discrimination against residents of Nassau County in apportioning each House of the Legislature	9
A. Mechanics of Discrimination	9
B. The Statistics of Discrimination	13
C. The Results of Discrimination	18
II. New York's apportionment system violates the rights of Nassau residents to due process and equal protection of the laws	20
A. The minimum constitutional standard for a method of state legislative apportionment is that it provide, as nearly as may be practicable, that each person's vote be the equal of any other person's vote	20
B. The New York system of apportionment necessarily leads to invidious discrimination	35
C. No valid reason to depart from the standard of equal voting power in New York has been shown; no adequate excuse for the invidious discrimination against Nassau residents has been suggested	36
Conclusion	44

CITATIONS

CASES	PAGE
Asbury Park Press v. Woolley, 33 N. J. 1, 11, 161 A. 2d 705, 710 (1960)	21
Baker v. Carr, 369 U. S. 186	2, 6, 7, 21, 22, 23, 24, 25, 27, 38, 43
Baker v. Carr, 206 F. Supp. 341	33
Boynton v. Virginia, 364 U. S. 454, 461-463 (1960)	18
Brown v. Board of Education, 347 U. S. 483, 489-490, 493	18, 21, 38
Clark v. Uebersee Finanz-Korp., A. G., 332 U. S. 480, 482	19
Davis v. Synhorst, 217 F. Supp. 492, 497 (S. D. Iowa 1963)	35, 38, 39, 40
Gibson v. United States, 329 U. S. 338, 341	19
Gomillion v. Lightfoot, 364 U. S. 339	24, 32
Gray v. Sanders, 372 U. S. 368	8, 25, 26, 27
Harris v. Shanahan, No. 90, 476, Dist. Ct. Shawnee County, Kansas, May 31, 1962	35
Jackman v. Bodine, 78 N. J. Super. 414, 431, 188 A. 2d 642, 651 (Super. Ct. 1963)	31, 34
Ker v. California, 374 U. S. 23	29
Lassiter v. Northampton County Election, 360 U. S. 45	30
League of Nebraska Municipalities v. Marsh, 209 F. Supp. 189 (D. Neb. 1962)	39
Levitt v. Maynard, 104 N. H. 243, 182 A. 2d 897 (1962)	37
Lisco v. McNichols, 208 F. Supp. 471 (D. Colo. 1962)	35, 41
Mann v. Davis, 213 F. Supp. 577, 584 (E. D. Va. 1962)	23, 35

PAGE

Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 434, 180 A. 2d 656, 668 (1962) 23, 35

McGowan v. Maryland, 366 U. S. 420, 425 37

Moss v. Burkhart, 207 F. Supp. 855, 891 (W. D. Okla. 1962) 36, 39, 41

Sanders v. Gray, 203 F. Supp. 158 (N. D. Ga. 1962), modified, 372 U. S. 368 (1963) 23

Scholle v. Secretary of State, 367 Mich. 176, 116 N. W. 2d 350 (1962) 23, 33, 36

Sims v. Frink, 208 F. Supp. 431, 435-436, 438 (M. D. Ala. 1962) 23, 31, 35

Sincock v. Duffy, 215 F. Supp. 169 (D. Del. 1963) ... 23, 27, 31, 32, 35, 36, 41

Sweeney v. Notte, 183 A. 2d 296, 301 (R. I. 1962) 36

Thigpen v. Meyers, 211 F. Supp. 826 (W. D. Wash. 1962) 35, 40

Toombs v. Fortson, 205 F. Supp. 248 (N. D. Ga. 1962) 35, 38

United States v. Bathgate, 246 U. S. 220, 227 (1918) 38

Walters v. City of St. Louis, 347 U. S. 231, 237 37

STATUTES CITED

United States Constitution:

Section 1 of Fourteenth Amendment 2

Title 42 of the United States Code:

Sections 1983 and 1988 2

Title 28 of the United States Code:

Sections 1343 (3), 2201 and 2202 2

Constitution of State of Michigan:

Article IV, Section 2 42

Constitution of the State of New York: PAGE

Article III, Sections 1 to 5 ..... 2, 10, 14, 15, 31

Article IX, Section 1(b) 31

Article XIX, Section 2 39

New York County Law:

Section 3 31

New York State Law:

Sections 120 to 124 2

MISCELLANEOUS

Silva, Apportionment in New York [Senate], 30 Fordham L. Rev. 581, 595-603 (1962) 9, 20

Silva, Apportionment of the New York Assembly, 30 Fordham L. Rev. 1, 2-13 (1962) 9, 20

Silva, Apportionment of the New York Legislature, 55 The American Political Science Review 870 (1961) 9

Wells, Legislative Representation in New York State, 15-19 (1962) 9

Vernon, Metropolis 1985, An Interpretation of the Findings of the New York Metropolitan Region Study, 178, 220-22 (1960) 10, 19

4 Revised Record of the Constitutional Convention of 1894 of the State of New York, 10-11 (1900) 15

Assemblyman Paul Reed Taylor of Yates County, Civic Virtue Lives in the Country, Monitor, May 1962, pages 7, 20 16

University of the State of New York, Fifty-Seventh Annual Statistical Report of the Education Department 1960-61, part II, Advance Statistics for 1960-61 School year, Table 23 (1961) 16

PAGE

United States Bureau of the Census, U. S. Census of Housing: 1960 and U. S. Census of Population: 1960 ..... 4, 16

N. Y. Times, June 11, 1962, page 26, columns 1-2; September 4, 1963, page 33, column 1 ..... 16, 43

The University of the State of New York (Paul A. Hedlund), State Aid to New York School Districts Paid During the School Year 1961-62 Including Four-Year Transient School Finance, 2 (Dec. 1962) 19

State of New York, Joint Legislative Committee on School Financing, New Formula Proposal and Staff Studies, 68 (Leg. Doc. No. 10 (1962)) 19

10 The Works of Thomas Jefferson, 3, 4 (Ford ed. 1905) 20

De Tocqueville, Democracy in America, 1 (Bradley ed. 1946 20

3 Lincoln, Constitutional History at New York, 127, 144, 159-160, 182, 189 (1906) 20

Hacker, Congressional Districting, 5 (1963) 20

The Twentieth Century Fund (Lewis), One Man—One Vote 1962) 21, 31, 40

Mair, Safeguards for Democracy, 3 (1961) 22

U. S. Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures, 67 (Dec. 1962) 22

McCloskey, The Supreme Court 1961 Term—Forward, 76 Harv. L. Rev. 54, 59 (1962) 22

Lewis, Legislative Apportionment and the Federal Courts, 71 Harv. L. Rev. 1057, 1086 (1958) 22

Note, Baker v. Carr and Legislative Apportionments: A Problem of Standards, 72 Yale L. J. 968, 983 (1963) 22, 28

Council of State Governments, Book of the States (1958-1963) 27

PAGE

Bickel, Reapportionment and Liberal Myths, 35 Commentary 483 (1963) 28

Neal, Baker v. Carr: Politics in Search of Law, 1962 The Supreme Court Review 252 ..... 28, 32

DeGrazia, Essay on Apportionment and Representative Government (1963) 28

Henkin, Morals and the Constitution: The Sin of Obscenity, 63 Colum. L. Rev. 391, 402 (1963) ... 30

McKay, Reapportionment and the Federal Analogy (National Municipal League, August, 1962) 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

WMCA, INC., *et al.*,

Appellants,

v.

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF EUGENE H. NICKERSON, CHAIRMAN, BOARD OF SUPERVISORS, NASSAU COUNTY, APPELLEE, IN SUPPORT OF APPELLANTS

Opinions Below

The opinion of the three-judge district court dismissing the complaint (R. 294-323) is reported at 208 F. Supp. 368. It is from the judgment entered following this opinion that this appeal is taken (R. 325-327).

The earlier opinion of Judge Levet of the District Court for the Southern District of New York on convening a three-judge district court is reported at 196 F. Supp. 758. The original opinion of the three-judge district court (Waterman, Circuit Judge of the Second Circuit, Ryan and Levet, District Judges of the District Court for the

Southern District of New York), dismissing the complaint (R. 87-113), is reported at 202 F. Supp. 741. The opinion of this Court vacating the judgment of dismissal and remanding the case for reconsideration in the light of *Baker* v. *Carr*, 369 U. S. 186, is reported at 370 U. S. 190. On remand, as noted above, the complaint was again dismissed (R. 294-323), leading to this appeal.

Jurisdiction

On August 17, 1962, there was entered a judgment dismissing on the merits (R. 324-325) the complaint challenging state constitutional and statutory provisions alleged to be in violation of the Fourteenth Amendment to the Constitution of the United States. A notice of appeal to this Court was filed in the district court on August 29, 1962 (R. 325-327); probable jurisdiction was noted on June 10, 1963 (R. 328), 374 U. S. 802.

Provisions of United States Constitution, Federal Statutes and State Constitution and Statutes Involved

Section 1 of the Fourteenth Amendment to the United States Constitution; Sections 1983 and 1988 of Title 42 of the United States Code; Sections 1343(3), 2201 and 2202 of Title 28 of the United States Code; Sections 1 to 5 of Article III of the Constitution of the State of New York; and Sections 120 to 124 of New York State Law are set forth in Appendix A to the Brief for Appellants.

Question Presented

Whether the New York constitutional and statutory provisions prescribing the method of apportionment deny to residents of Nassau County their rights to equal protection of the laws or due process of law under the United States Constitution.

Statement

A. Position of Appellee, Eugene H. Nickerson.

This is a class action brought by persons who are taxpayers and voters in the State of New York (including a resident of Nassau County (R. 2)) against state officials having duties in connection with the apportionment of representatives and their election to the state legislature (Complaint, ¶¶ 3-5, R. 2-4) to have declared unconstitutional the New York State constitutional and statutory provisions governing apportionment (R. 11) and to obtain other appropriate equitable relief (R. 11-12).

At the time the action was commenced A. Holly Patterson, the then County Executive and Chairman of the Board of Supervisors of Nassau County, was one of the defendants (Complaint, ¶ 5, R. 3); he opposed granting relief to plaintiffs (R. 90). Mr. Eugene H. Nickerson, a resident of Nassau County, supported the plaintiffs' position as *amicus curiae* (R. 89).

In November, 1961, Mr. Nickerson was elected County Executive and Chairman of the Board of Supervisors of Nassau County. He was substituted as a party appellee by this Court in the prior appeal (370 U. S. 190; R. 115) and a brief in support of appellant's claim was filed on his behalf. See Brief of Eugene H. Nickerson, *WMCA v. Simon*, October Term, 1961, No. 836. Mr. Nickerson then answered the complaint by admitting error and affirmatively requesting that "the Court grant to the plaintiffs . . . the relief prayed for . . ." (R. 116-117). At the hearing in the court below, following this Court's vacation of the prior judgment of dismissal (370 U. S. 190), Mr. Nickerson personally (R. 203-204) and by counsel (R. 126, R. 149) supported the position of plaintiffs on behalf of residents of Nassau County (R. 203-204).

Mr. Nickerson's position in the case is required, as will be shown below, by the fact that the method of appor-

tionment in New York discriminates against residents of Nassau County in a way so strikingly invidious as to constitute an unconstitutional denial of their voting rights.

Appellee, Eugene H. Nickerson, adopts and supports appellants' brief as well as the brief of Paul R. Screvane, *et al.*, appellees, in support of appellants.

B. Basis for Decision Below.

Neither the opinion of District Judge Levet (R. 295-319) in which District Judge Ryan (R. 320-322) and Circuit Judge Waterman (R. 323) concurred, nor the concurring opinion, mentions the impact on Nassau County residents of malapportionment in New York State.[1] The opinion of Judge Levet points out, however (R. 313)—as does Judge Ryan's opinion (R. 321)—that the six counties in which plaintiffs reside (including Nassau) "contain 56.2% of the citizen population of the State, but . . . comprise only 3.1% of the area of the state." Five "tests" for finding "invidious discrimination" are set out in Judge Levet's opinion and discussed as the basis for the court's conclusion that such discrimination has not been shown:

> "(1) Rationality of state policy and whether or not the system is arbitrary.

---

[1] The statistics relied upon by the court—1960 census figures compared with the former reapportionment based upon the 1950 census rather than the forthcoming reapportionment (R. 297)—indicate that New York City has roughly the same proportion of the total number of New York State senators and assemblymen as its population bears to the population of the state as a whole. The inappropriateness of this analysis in light of New York City's declining population is discussed in the Brief of Paul R. Screvane, *et al.*, Appellees, in support of appellants at pages 13-14. References throughout brief are to exhibits in the record even where not admitted in evidence. The source of the record material is the United States Bureau of Census, *U. S. Census of Population*: 1960 and *U. S. Census of Housing*: 1960, and is subject to judicial notice. See footnote 10, *infra*.

(2) Whether or not the present complexion of the legislature has a historical basis.

(3) Whether there lies within the electorate of the State of New York any possible remedy (if gross inequalities exist).

(4) Geography, including accessibility of legislative representatives to their electors.

(5) Whether the Court is called upon to invalidate solemnly enacted State Constitutions and laws (R. 304-305)."

The concurring opinion of District Judge Ryan relies upon the proposition that, "if apportionment were based solely on population, this would mean that 3% of the state's area would dominate the rest of New York"; that urban representatives are unlikely to understand "the problems" of rural areas; and that one disadvantage of increasing "the area per representative" by eliminating rural over-representation could be that "Representatives might not adequately represent localities which were not their home" (R. 322). He also noted that New York State provided a political remedy for malapportionment since every twenty years the people are asked if they wished to have a convention to revise the constitution and in 1957 a majority of voters answered "No" (R. 322).

Introduction and Summary of Argument

The impact of malapportionment on the suburban community of Nassau and Suffolk Counties typifies a national problem. By education, income, managerial and professional responsibility, interest in the arts, sciences and government and other appropriate criteria of status in a democracy, the residents of Nassau, as a group, have not been shown to be less worthy than residents of other areas of the state. See Table 1, pages 16-17, *infra*. Yet they are deprived of their political rights and the ability to exer-

cise any fair proportion of influence on the legislative and political processes of the state.

This deprivation occurs because suburban residents have been caught in the coils of a 19th century scheme designed by rural interests to prevent city-dwellers from achieving ascendancy. Both rural areas and central cities are declining in relative and even absolute population while the population of suburban areas is increasing in both respects. Yet the plan embodied in the 1894 Constitution of New York operates with remorseless irrationality to deprive 1963 suburban dwellers of their constitutional right to participate equally in our representative form of government.

Whether or not constitutional when first adopted, New York's apportionment provisions have, through the passage of time, become unconstitutional by depriving a large number of the state's voters of their right to vote and thereby of their right to equal protection of the laws. In this respect the failure of the apportionment formula to take appropriate account of population shifts has created much the same kind of problem as did Tennessee's failure to reapportion after 1901 which was before this Court in *Baker* v. *Carr*, 369 U. S. 186.

By state constitutional mandate both houses of the legislature are malapportioned in New York. The value of the vote of residents in relatively sparsely populated counties is multiplied by reducing the voting power of residents in more densely populated counties. In the Senate this discrimination is accomplished by computing the number of seats to be allocated to counties with more than 6% of the population in a way different from that used for other parts of the state. In the Assembly the same result is reached by limiting the number of seats and allocating an excessive proportion of them, one to each county no matter what its population.

As a result of this discriminatory scheme, the ratio between the least and most populous senate district,

Suffolk, is 3.9 to 1, and between the least and most populous assembly district, in Nassau, is 21 to 1. After reapportionment based upon the 1960 census, the least populous senate district will have 2.6 the voting power of the most populous in Nassau; the least populous assembly district will have 11 times the voting power of one of the districts in Suffolk. Voting districts—outside of Nassau County—containing approximately 37% of the state's population will elect a majority of the Assembly, and districts containing approximately 38% will elect a majority of the Senate.

Deliberate discrimination results in Nassau County residents being denied representation in the legislature. Their right to vote—the most prized possession of a citizen in a democracy—is arbitrarily reduced in value. The effect of this deprivation of voting power is equivalent to refusing to count the ballots of hundreds of thousands of voters from this county.

As a practical matter, denial of representation in the legislature results in withholding from Nassau County communities the kind of laws and financial assistance they badly need. In this and similar suburban areas, swift growth and demands for the highest forms of education and other municipal services have created problems that can only be solved by the state legislature or—in a way inimical to our federal system—by ignoring the states and concentrating power in the federal government. Representatives from the rural counties have neither the interest in, nor the understanding of, suburban problems that representatives from the suburbs themselves have.

Our democratic system has reached a stage of maturity at which there is a consensus of constitutional and political theory and a public assumption that each person's vote is to be given the same weight as every other person's, insofar as it is practicable to do so. The concept of "one man, one vote" has been the dominant standard of the legislative apportionment cases since *Baker* v. *Carr*, 369 U. S. 186.

Gray v. *Sanders*, 372 U. S. 368, the most recent expression of this Court on the matter, has explicitly adopted the concept of "one person—one vote" in elections for a statewide officer. There is no basis in principle for distinguishing votes for a legislature. The legislature itself is a single body, acting with statewide officials to adopt laws which govern the state as a whole. Adequate representation in the legislature is at least as important to the voter as the right to select a particular incumbent for most statewide offices. Any loss of representation must be reflected not only in a loss of influence in the legislature but throughout the government structure, for under our system of checks and balances the executive must constantly take into account legislative reaction to his program.

The constitutional standard of voting power proportionate to population is clear and easily enforceable. Nevertheless, it permits the states wide discretion in devising variant systems to comply with it. Equal voting power implies the same standard for both houses of the legislature.

Even if this Court does not explicitly adopt the principle of voting rights proportionate to population for both houses, New York's scheme results in representation so disproportionate to population and so discriminatory as to constitute invidious discrimination as a matter of law. Each house of the legislature departs from minimum constitutional standards.

No reason for the violation of the constitutional rights of appellants has been offered that bears any relevance to ability to vote or the need for representation. Discrimination is not based on considerations of convenience of communication of representatives with their constituents or upon any other rational geographic factor. It is based purely on an intent to discriminate against heavily populated areas.

Due process of law requires that legislation be based on rational assumptions about the facts justifying the law. The only hypothesis that could justify the discrimination involved in New York's scheme of apportionment is that rural voters are superior as citizens to suburban and urban voters. But the evidence on this score indicates that the hypothesis is contrary to the facts.

The existence of a possible political remedy through a vote for a constitutional convention in 1977 does not provide adequate relief for a current violation of the personal constitutional right to vote. Even assuming that a fairly selected constitutional convention could provide a remedy, a New York convention would necessarily be ineffective, since representatives to the New York convention must be selected from malapportioned districts.

There is no reason to expect that New York will seek to circumvent its responsibility to provide a constitutionally valid method of apportionment, should the present scheme be declared unconstitutional. No foreseeable difficulties in formulating a remedy warrant denial of equitable relief to appellants.

I. There is gross and invidious discrimination against residents of Nassau County in apportioning each House of the Legislature.

A. Mechanics of Discrimination.[2]

Apportionment of the legislature every ten years on the basis of the most recent federal census is required by the

[2] See the Brief of Paul R. Screvane, *et al.*, Appellees, In Support of Appellants at pages 17-39 for a complete explanation of the system. See also Silva, *Apportionment in New York [Senate]*, 30 Fordham L. Rev. 581, 595 *et seq.* (1962); Silva, *Apportionment of the New York Assembly*, 30 Fordham L. Rev. 1 (1962); Silva, *Apportionment of the New York State Legislature*, 55 The American Political Science Review 870 (1961). The description used in this brief is based on Wells, *Legislative Representation in New York State*, 15-19 (1962).

New York State Constitution. See New York Constitution, Article III, Section 4, paragraph 1; Section 5, paragraph 1. The last apportionment took place in 1953 (New York Laws of 1953, Chapter 893), and a new apportionment must be adopted within the next few years. See New York Constitution, Article III, Section 4. If, however, the New York constitutional provisions setting forth the method of apportionment are not declared unconstitutional, then the legislature will be forced to discriminate against Nassau County residents, just as it has been forced to in the past.

The operation of the New York constitutional formula for apportionment (New York Constitution, Article III, Sections 2-5) can be illustrated by assuming that all of the 1960 population resided in the six most heavily populated counties of the state except for one citizen residing in each of the remaining counties.[3] In such case, the formula would result in a Senate consisting of 75 members, each of the six populated counties having 8 senators. 16,240,000 persons would be represented by 48 senators and 56 persons would elect 27 senators. In the assembly the six populated counties would be entitled to 95 assemblymen and the 56 people residing outside these counties would be entitle to 55 assemblymen.

The situation under the prospective New York reapportionment will, in some respects, be worse than that in the hypothetical case since the relatively sparsely populated counties will control the legislature. Voting districts containing approximately 37% of the state's population will elect a majority of the Assembly, and approximately 38% a majority of the Senate.

---

[3] It is predicted that while the "central city" of New York will decline in population, the inner ring of surrounding counties such as Nassau will grow greatly for the next thirty years and an outer ring of counties such as Suffolk will grow even faster. Vernon, *Metropolis 1985, An Interpretation of the Findings of the New York Metropolitan Region Study*, 220-222 (1960).

In the Senate, seats are apportioned by first dividing the state's citizen-population by fifty. The result is called "the first ratio". All counties with citizen-populations at least three times this number—that is, at least 6% of the state's citizen-population—are assigned seats by comparing their citizen-populations to the first ratio. These counties are referred to as "the first-ratio counties". Counties with citizen-populations between three and four times the ratio receive three seats; those with citizen-populations between four and five times the ratio receive four seats; those with citizen-populations between five and six times the ratio receive five seats, and so on.

Next, the number of Senate seats given each first-ratio county is compared to the number it had in 1894. For this purpose the present counties are reconstructed as they were in 1894 when, for example, Queens and Nassau were one. If any of these counties is found to be entitled to more seats than it had in 1894, the total Senate membership is increased by the same number of additional seats. Thus, if a county with six seats in 1894 were given ten under a new apportionment, it would cause Senate membership to increase by four over the basic fifty.

After this process is completed, the remaining seats in the Senate are divided among the counties which have less than 6% of the citizen-population. To apportion these seats, a "second ratio" is used—obtained by dividing the combined citizen-population of all the under-6% counties by the remaining number of seats—including the newly-created ones. These seats are then distributed on the basis of the second ratio. The second ratio is not specifically established or required by the Constitution but is made necessary by its limitations and by judicial interpretation of the constitutional formula.

If this two-ratio system for the senate did not exist there would be 24 senate seats left for the second-ratio counties instead of 31. Each time a first-ratio county becomes en-

titled to a greater share of the basic 50 seats than it had in 1894, the number available for the other counties would decrease if the constitutional machinery did not create extra seats. In this way, additional seats gained by the heavily-populated counties since 1894 do not result in a corresponding reduction of seats for the smaller counties—despite the fact that the smaller counties' proportionate share of the state's citizen-population has actually decreased. Population increases by the over-6% counties actually cause the under-6% counties to become more over-represented. Indeed, the complex Senate apportionment formula produces the following rather startling result: the relative power of voters in the over-6% counties decreases as those counties' proportionate share of the state population increases, while the relative power of voters in the under-6% counties increases as those counties' proportionate share of the state population decreases.

The constitutional formula for Assembly apportionment is less intricate than the one for the Senate but it is even more effective in producing rural over-representation. The number of Assembly seats is set at 150, distributed among the counties as follows:

1) First, every county is given one seat, except Hamilton and Fulton Counties which share one seat.

2) Next, every county which has at least 1% of the state's citizen-population is given an additional seat.

3) Finally, all the remaining seats are divided among those counties which have at least 1⅓% of the state's citizen-population in accordance with their relative population.

The effect of this process is to separate the counties into groups on the basis of population. Inequity results from the fact that because so many assembly seats are distributed on the first step, not enough remain to provide the heavily-populated counties with a proportionate share.

B. The Statistics of Discrimination.

Nassau and Suffolk, two of the nation's most swiftly growing suburban counties, dramatically illustrate the irrationality, arbitrariness and invidious discrimination required by New York's scheme of apportionment.

The six assemblymen elected from Nassau represent an average population of 212,634 (R. 227);[4] the most populous assembly district in the state is Nassau's Fourth District with a population of 314,721. Suffolk's three assemblymen now represent an average population of 216,704 (R. 227), while the statewide average per district is only 108,272—and this average includes both under and over-represented districts. The ratio between the most populous and the least populous district—Nassau's Fourth and Schuyler County (whose population is 14,974)(R. 229)—is 21 to 1; the ratio between the average Nassau district and the least populous district is 15 to 1.

The discrepancy between population and voting power is endemic to the system. The aggregate population of the thirty-one least populous counties is the state is 1,289,129 (R. 227-229, R. 238) which is approximately the same as Nassau's total population of 1,275,801 (R. 227). Yet Nassau is represented by six assemblymen while the thirty-one least populated counties are represented by thirty assemblymen (R. 227-229).

In the Senate, although the state-wide average population represented by each senator is only 280,014, Suffolk County's one senator represents a population of 650,112 (R. 227), while Nassau's three senators each represent an average of 425,267 (R. 227). The ratio between the most populous senate district, Suffolk, and the least popu-

---

[4] All population figures are those used in New York apportionment and they are given as of the 1960 census unless otherwise noted. See footnote 1, *supra*. They exclude alien residents. As in the case of almost all counties outside of New York City, over 98% of Nassau's residents are citizens (R. 291).

lous, comprising Saratoga, Warren and Essex counties, with a total population of 166,715 (R. 228), is 3.9 to 1. The ratio between the average Nassau County senatorial district and this least populous senatorial district is 2.6 to 1.

Reapportionment based upon the 1960 census will continue to leave Nassau County grossly under-represented in the Senate. Nassau County's three senatorial districts will each have an average population of 425,267 (R. 234). The least populous district based upon the 1960 census—which will probably comprise Putnam and Rockland Counties[5]—will have a population of 162,840 (R. 227-228); the ratio is 2.6 to 1.[5]

It is instructive to notice that despite the fact that Nassau's population increased from 655,690 in 1950 to 1,275,801 in 1960 (R. 227)—an increase which almost doubled it—Nassau County will not obtain a single additional senator upon reapportionment (compare R. 227 with R. 234). This anomaly results from the fact that previously Nassau had less than 6% of the population of the state while now it has more than 6% of the state's population, and counties falling into the latter category are specifically discriminated against by the apportionment scheme.

Among the other absurd results of any forthcoming reapportionment as mandated by New York's Constitution will be that Monroe County—a favored county because it does not have more than 6% of the state's population—will have the same number of senators as Nassau

---

[5] The legislature has some discretion in drawing senatorial district lines for multi-county districts (R. 285). See New York Constitution, Article III, Section 4. In order to comply with the rule requiring districts of equivalent population, the legislature is likely to combine Putnam in a district with Rockland. But even if the Essex-Saratoga-Warren district is recreated as the one with the smallest population, it will have a total of 166,715, leaving the ratio of 2.6 to 1 unchanged (R. 273). See also the testimony at R. 178. In no event will the ratio be less than 2.5 to 1.

(R. 237), although its population of 571,029 (R. 234) is less than half Nassau's. Onondaga County, with a population of 414,770 (R. 227), will have two senators (R. 237) although each of Nassau's three senate districts will have a larger population than that county. Voters in counties with approximately 38% of the population will elect a majority of senators (R. 227-229, R. 237).

In the Assembly, Schuyler County, under apportionment based on the 1960 census, will continue as the least populous district with 14,974 (R. 238), while Nassau's ten districts will average 127,580 (R. 237)—a ratio of almost 9 to 1. Suffolk will probably have one assembly district of 171,000,[6] a ratio of 11 to 1 compared to the least populous assembly district (R. 237-240). After the reapportionment Nassau's population will have 10 assemblymen while the 31 least populated counties with a total population almost the same as Nassau's will continue to be represented by 30 (R. 238-239). Counties with approximately 37% of the state's population will send a majority of assemblymen to the legislature (R. 285).

Although some of the proponents of New York's scheme of malapportionment sought to justify it on the ground that the residents of favored counties were superior,[7] and

---

[6] The record at R. 237 and R. 240 shows a Suffolk district with a population of 216,704 after reapportionment. However, because of the rules against dividing towns (New York Constitution, Article III, Sections 4 and 5), the largest assembly district in Suffolk will probably cover the same area as the First Senatorial District including Brookhaven, Easthampton, Southold, Southampton, Shelter Island, Riverhead and adjacent and enclosed communities, with a total population of over 170,000. In any event, one projected Monroe County District will have a population of 190,343 (R. 240) and the ratio of that County is 13 to 1.

[7] See, *e.g.*, Delegate to the New York 1894 convention, Cookingham, who noted in support of discrimination: "the average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government, to the average citizen in the great cities." 4 Revised Record of the Constitutional Convention of 1894 of the State of New York, 10-11 (1900). See also Appendix C, Appellants' Brief, pages 131-139.

this reason is still sometimes openly stated, there is not the slightest support for it in fact.[8] The discrepancy between voting power of Nassau residents and their position as taxpayers and citizens is illustrated by the table set out below:

TABLE I

Comparison of Nassau and Upstate Counties with Respect to Voting Power, Education, Occupation, and Economic Status (1960).[9]

VOTING POWER RATIO

Value of the vote of residents of counties shown as compared to the vote of Nassau residents computed on the basis of 1960-citizen population per representative.

	Based upon Present Apportionment		*Based upon Prospective Apportionment*	
	Assembly	Senate	Assembly	Senate
Nassau (average district)	1	1	1	1
Essex	6.1	2.6	3.7	2.6
Warren	4.9	2.6	2.9	2.6
Saratoga	2.4	2.6	1.5	2.6
Schuyler	14.3	2.1	8.6	2.1

[8] Assemblyman Paul Reed Taylor of Yates County, *Civic Virtue Lives in the Country*, Monitor, May 1962, pp. 7, 20, declared: "In contrast to the countryman's stability there is plenty of evidence that the city dweller has limitations on his self-governing ability." See some of the contrary evidence in Appellants' Brief at footnote 37.

[9] Voting power data is based on record at R. 227-229 and R. 237-240. Public School expenditures from the University of the State of New York, *Fifty-Seventh Annual Statistical Report of the Education Department 1960-61, part II, Advance Statistics for the 1960-61 School Year*, Table 23, figures based on average of figures given per school district within counties. All other data from U. S. Bureau of the Census, *U. S. Census of Housing: 1960* and *U. S. Census of Population: 1960*. For an example of the extensive community interest in the arts see a description of the 1963 Nassau County Arts Festival in N. Y. Times, September 4, 1963, page 33, column 1.

The prospective apportionment in the Senate is based upon the assumptions in footnote 5, *supra*. In no event will the ratio be less than 2.5 to 1.

EDUCATION

	% Having Completed Some College		Median Schooling in Years		Average Public School Expenditures Per Weighted Pupil	Tax Levy Per Resident Weighted Pupil
	1-3 yrs.	4 yrs.	Male	Female		
Nassau	9.4	7.8	12.3	12.1	$639.20	$486.10
Essex	4.6	3.2	9.6	10.9	602.57	292.21
Warren	5.4	4.6	10.7	11.4	603.91	304.36
Saratoga	4.2	3.9	10.3	11.0	490.91	201.36
Schuyler	3.6	3.1	10.3	11.2	413.50	115.50
N. Y. State	4.8	5.4	10.6	10.7	520.00	344.00

OCCUPATION BY PERCENTAGE OF TOTAL WORK FORCE

	Professional	Manager	Clerical	Sales	Farm	Skilled Labor	Unskilled Labor
Nassau	16.7	14.7	16.9	10.6	0.3	14.4	2.6
Essex	12.2	8.3	10.2	5.6	3.1	14.2	6.6
Warren	12.5	10.7	12.9	8.3	0.5	12.5	5.5
Saratoga	12.4	6.6	13.4	5.9	2.3	15.5	4.6
Schuyler	9.8	6.3	10.9	6.3	11.3	16.8	6.1
N. Y. State (male only)	12.2	11.8	9.8	7.7	1.4	18.2	5.3

ECONOMIC STATUS

	Median Income—1959			*Homes Owned*		*Residence Rented*	
	Family	Male	Female	Median Value	Estimated Total Value (Median value x number of homes owned)	Median Mo. Rental	Estimated Total Mo. Rental (Median rental x number of of rentals)
Nassau	$8,529	$6,513	$1,755	$18,500	$ 5,220,000,000	106	$ 5,890,000
Essex	5,259	3,514	1,098	7,600	39,391,000	60	168,000
Warren	6,335	3,984	1,365	9,800	73,250,000	73	295,000
Saratoga	5,822	4,216	1,374	10,300	136,372,000	65	477,100
Schuyler	5,098	4,032	1,115	8,200	16,700,000	66	60,190
N. Y. State	6,371	4,619	1,940	15,300	39,050,000,000	74	214,400,000

C. The Results of Discrimination.

The denial of the right to vote through serious malapportionment constitutes, we submit, a denial of due process and equal protection of the laws. What is being denied is one of the most cherished possessions of citizens, a right to participate in government as a voter, which is, in the long run, fundamental to all other civil rights. Voting equality has a spiritual and emotional value to individuals that is incalculable.

Equal voting rights also have value on a less lofty plane. Voting power is denied to citizens in order to gain economic and social, as well as political advantage for those whose voting power is multiplied. Indeed, unless we are to assume that the right to vote has no more than sentimental value in our country, the proposition is axiomatic that the denial of a right to vote constitutes a significant loss.

The ways in which the distortion of voting power have been reflected in government policy are clear. Some details are set forth with respect to the City of New York in the affidavit of R. Peter Straus (R. 250).[10] Moreover, the allegations in the complaint that, as a result of malapportionment, the legislature discriminated against segments of the population by unjust taxation and unfair distribution of funds (R. 9) must, for the purposes of this appeal, be taken as true, since plaintiff was denied the right

---

[10] While proof of the matter contained in this affidavit was denied admission in evidence (R. 133-134, R. 145-147) over objection of Appellee, Eugene H. Nickerson (R. 149, R. 132-133), the details are in the main subject to judicial notice, involving as they do matters of public record and common knowledge. See, *e.g.*, *Boynton* v. *Virginia*, 364 U. S. 454, 461-463 (1960); *Brown* v. *Board of Education*, 347 U. S. 483, 489-490, 493.

to prove the contention. *Clark* v. *Uebersee Finanz-Korp., A. G.*, 332 U. S. 480, 482; *Gibson* v. *United States*, 329 U. S. 338, 341.

In Nassau and similar suburban communities, swift growth and demands for education and other municipal services have created great fiscal pressures and need for legislation that can only be solved in state legislatures.[11]

Under-representation means that the interests of Nassau residents and others similarly situated will be inadequately protected in the legislature. Nassau residents have been forced to shoulder exceedingly heavy local tax burdens.[12] For example, state aid to education is predicated upon state-wide averages of cost per student. If circumstances compel a local school district—as Nassau community school districts are compelled—to spend more than the state average, "this added cost is borne entirely by the local district." See The University of the State of New York (Paul A. Hedlund), *State Aid to New York School Districts Paid During the School Year 1961-62 Including Four-Year Transient School Finance*, 2 (Dec. 1962). See also State of New York, Joint Legislative Committee on School Financing, *New Formula Proposal and Staff Studies*, 68 (Leg. Doc. No. 10 (1962)). Adequate representation of urban and suburban groups might well have made possible greater local aid. Examples of fiscal discrimination resulting from inadequate representation were offered in evidence but rejected (R. 250-268, excluded at R. 145-147).

---

[11] See Vernon, *Metropolis 1985, An Interpretation of the Findings of the New York Metropolitan Region Study*, 178 (1960). "Nassau's communities helped to bridge the difference between expenditure and revenue by the growing use of state aid." *Id.* at 179.

[12] *Ibid.*

II. New York's apportionment system violates the rights of Nassau residents to due process and equal protection of the laws.

A. The minimum constitutional standard for a method of state legislative apportionment is that it provide, as nearly as may be practicable, that each person's vote be the equal of any other person's vote.

The right to equal representation is at the heart of our constitutional system. Insistent concern with the issue begins, in this country, with the nation's birth.[13] One of the complaints "submitted to a candid world" in our Declaration of Independence was the King's attempt to force the colonists to "relinquish the right of representation in the Legislature, a right inestimable to them and formidable to tyrants only." The Declaration's premise "that all men are created equal" requires the conclusion reached by Jefferson "that a government is republican in proportion as every member composing it has his equal voice in the direction of its concerns . . . by representatives chosen by himself . . ." Letter to Samuel Kercheval, 12 *The Works of Thomas Jefferson* 3, 4 (Ford ed. 1905). "Equality of condition is the fundamental fact from which all others seem to be derived." De Tocqueville, *Democracy in America*, 1 (Bradley ed. 1946). Deviations there have been from the

---

[13] Prior to the 1894 convention, representation in both the New York Senate and Assembly was predicated on an approximation of equal representation for equal population. See 3 Lincoln, *Constitutional History of New York*, 127, 144, 159-160, 182, 189 (1906). See also Appellants' Brief, Appendix B, pages 125-130; Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581, 597-603, 31 *Id.* 1, 2-13 (1962). The equalitarian voting principle "ingrained in the national character" (Hacker, *Congressional Districting*, 5 (1963)) was, in New York and other states, sacrificed at the turn of the century to retain political supremacy of rural interests. See Brief *Amicus Curiae* of the American Civil Liberties Union, The American Jewish Congress, and the National Association for the Advancement of Colored People, Point IV, B, History.

ideal, and property and other qualifications on the right to vote have persisted, but few in recent years have doubted that the essence of our system was equality of all citizens in the exercise of political rights—a principle now often summarized in the phrase "one man, one vote."

The principle has been eloquently stated in a case which presaged *Baker* v. *Carr*:

> "Ours is a representative form of government. It can remain such in the true sense only if the vote of each citizen has equality with that of his neighbor in the other counties of the State. . . . To the extent that his county is given a lesser number of members in the lower House than are its due, his vote diminishes in value and thus he does not receive the full measure of protection and representation which are the essence of democracy. No man can boast of a higher privilege than the right granted to the citizens of our State and Nation of equal suffrage and thereby to equal representation in the making of the laws of the land. . . . In our view, such deprivation [of equal representation] not only offends against the *State Constitution* but may very well deny equal protection of the laws in violation of the *Fourteenth Amendment* of the *United States Constitution.*"
>
> *Asbury Park Press* v. *Woolley*, 33 N. J. 1, 11, 161 A. 2d 705, 710 (1960). (Emphasis in original.)

In this country, we have now reached a consensus on the right of each voter not to have the value of his vote diminished by the state. This agreement is at least as broad and firm as was that on the effects of segregation relied upon in *Brown* v. *Board of Education*, 347 U. S. 483, 494, n. 11. The conference of scholars assembled in 1962 by the Twentieth Century Fund agreed that population is "the only legitimate basis of representation today." The Twentieth Century Fund (Lewis), *One Man—One*

Vote, 1 (1962). They pointed out that "The cry of 'one man, one vote' heard today in the emerging new lands of Asia and Africa is no more than a reflection of democratic philosophy learned from the West." *Id.* at 5. See also Mair, *Safeguards for Democracy*, 3 (1961). As the United States Advisory Commission on Intergovernmental Relations put the matter: "considerations of political equity demand . . . that the apportionment of both houses in the state legislature . . . be based strictly on population." U. S. Advisory Commission on Intergovernmental Relations, *Apportionment of State Legislatures*, 67 (Dec. 1962). (Original in italics.)

Even those who have expressed doubt about the wisdom of *Baker* v. *Carr*, 369 U. S. 186 (1962), concede that the concept of equality of voting power represents "a latent consensus" of Americans that this is the "presumptive democratic standard." McCloskey, *The Supreme Court 1961 Term—Forward*, 76 Harv. L. Rev. 54, 59 (1962); *cf.* Lewis, *Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057, 1086 (1958); Note, *Baker* v. *Carr and Legislative Apportionments: A Problem of Standards*, 72 Yale L. J. 968, 983 (1963).

The sole testimony in the record on the issue of accepted political theory is that of Professor Ruth C. Silva, an expert in this field (R. 154-155). While she was not allowed to testify with respect to the issue on direct, on cross-examination she testified as follows:

> "Q. . . . Have you used the term 'equitable representation' or 'equal representation'?
>
> [fol. 405] A. Yes, sir, I have.
>
> Q. Would you tell us exactly what you mean by those terms? A. That one man equals one vote, that a popular vote cast for a State Senator in any one county has equal weight with one popular vote cast in any other county.

Q. There are other theories of equal representation known to the science of political science, well recognized ones? A. Not that I know of. Historically there have been other theories. But I do not believe political science accepts other theories."

. . . . .

"A. I had assumed, and I think my profession generally assumes, that the ideal is one man, one vote; that this is a basic premise of democracy.

[fol. 407] Q. You assume that that is a basic premise of democracy A. I know the literature, the apportionment literature assumes this." (R. 164-166)

"One-man, one-vote" has been a dominant theme in the legislative apportionment cases decided since *Baker* v. *Carr*, 369 U. S. 186 (1962). See, *e.g.*, *Sanders* v. *Gray*, 203 F. Supp. 158 (N. D. Ga. 1962), *modified*, 371 U. S. 368 (1963); *Sincock* v. *Duffy*, 215 F. Supp. 169 (D. Del. 1963); *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va. 1962); *Scholle* v. *Secretary of State*, 367 Mich. 176, 116 N. W. 2d 350 (1962). This formula is emphatically asserted to be a fundamental precept of democracy. "Equality in such matters lies at the basis of our free government." *Scholle* v. *Secretary of State*, 367 Mich. at 187, 116 N. W. 2d at 354. Looking at this Court's decision in *Baker*, one court has pointed to the

> "strong implication . . . that there must be some reasonable relationship of population, or eligible voters, to representation in the General Assembly, if an apportionment is to escape the label of constitutionally-prohibited invidious discrimination."
>
> *Maryland Committee for Fair Representation* v. *Tawes*, 228 Md. 412, 434, 180 A. 2d 656, 668 (1962). See also *Scholle* v. *Secretary of State*, 367 Mich. 176, 185-186, 116 N. W. 2d 350, 353-354 (1962). *Cf. Sims* v. *Frink*, 208 F. Supp. 431, 435-436 (M. D. Ala. 1962).

There are numerous indications in the developing federal constitutional law pointing squarely to the conclusion that equal voting rights are an element of equal protection of the law. The Fifteenth Amendment prohibiting discrimination in voting rights based on race, color, or previous condition of servitude and the Nineteenth prohibiting sex as a basis for abridging the right to vote suggest that discrimination of the kind at issue in this case is not permissible. The majority opinion in *Baker* v. *Carr*, 369 U. S. 186, summarized some of the earlier development (369 U. S. at 208):

> "A citizen's right to vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf. *United States* v. *Classic*, 313 U. S. 299; or by a refusal to count votes from arbitrarily selected precincts, cf. *United States* v. *Mosley*, 238 U. S. 383, or by a stuffing of the ballot box, cf. *Ex parte Siebold*, 100 U.S. 371; *United States* v. *Saylor*, 332 U. S. 385."

Classic, *Mosley* and *Saylor*, suggest the conclusion that a voter would be deprived of both equal protection of the law and due process if the legislature declared that his vote could not be counted or that it could only count for a fraction. Is this not the same result achieved by providing that one vote upstate is worth many times a vote in Nassau County?

Gomillion v. *Lightfoot*, 364 U. S. 339, pushed forward the line of decisions recognizing constitutional limitations even on such matters of intimate state concern as municipal boundaries, when the purpose or "inevitable effect" (364 U. S. at 342) of a change was to discriminate in voting rights on the ground of race. For, the unanimous court noted (364 U. S. at 347),

"When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. . . ."

Baker v. *Carr*, 369 U. S. 186, made it clear that there were constitutional standards limiting dilution of voting power by the states. Finally, in *Gray* v. *Sanders*, 372 U. S. 368, an explicit and workable test was set out. "How," this Court asked, ". . . can one person be given twice or ten times the voting power of another person in a statewide election merely because he lives in . . . the smallest rural county?" (372 U. S. at 379). This Court's answer was that there was no constitutional way to discriminate against voters (372 U. S. at 379-380, 381):

"Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and whatever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of 'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions."

. . . .

". . . But once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded. . . . The conception of political equality from the Declaration of Independence, to Lincoln's

> Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote. . . . . "

Justices Clark and Stewart, concurring, also adopted the principle of "one voter, one vote." *Id.* at 382.

Gray, to be sure, involved votes within a single constituency—the state—for a single statewide officer. But there is no basis in principle for distinguishing votes for a legislature. The legislature itself is a single body. Members of the legislature act jointly with the governor in enacting laws which govern the state as a whole. Adequate representation in the legislature is as important to the citizen-voter as the nature of the men who hold statewide offices; in many instances the statewide office is relatively unimportant compared to the legislature.[14]

---

[14] Among the many kinds of state-wide elective offices which are far less important than the legislature are the following: *Alabama:* Commissioner of Agriculture and Industry, President of Public Service Commission; *Arizona:* Superintendent of Public Instruction, State Mine Inspector, Corporation Commissioner; *Arkansas:* Commissioner of State Lands; *California:* Members of State Board of Equalization; *Colorado:* Regents of the University of Colorado; *Delaware:* Insurance Commissioner; *Florida:* Commissioners of Railroad and Public Utilities Commission, Commissioner of Agriculture; *Georgia:* Public Service Commissioners; *Idaho:* Mines Inspector; *Illinois:* Clerk of the Supreme Court; *Indiana:* Reporters of Supreme Court and Appellate Courts; *Iowa:* Secretary of Agriculture, Commerce Commissioner; *Kansas:* Commissioner of Insurance, State Printer; *Kentucky:* Commissioner of Agriculture, Labor, and Statistics, Clerk of Court of Appeals; *Louisiana:* Board of Education members, Public Service Commissioner, Custodian of Voting Machines, Commissioner of Agriculture and Immigration, Register of State Land Office; *Michigan:* State Highway Commissioner, Members of Board of Governors of Wayne State University, Board of Agriculture members, Board of Education members, Regents of University of Michigan; *Minnesota:* Railroad and Warehouse Commissioner, members of Railroad

(Footnote continued on following page)

The principle of *Gray* v. *Sanders* that all votes must be given equal weight in electing state-wide officials, has direct relevance for the analogous case of legislative apportionment. See *Sincock* v. *Duffy*, 215 F. Supp. 169 (D. Del. 1963). To illustrate this analogy, imagine a state in which all state legislators were elected at large, throughout the state and where the vote of a resident of a rural county was then so weighted that it was equivalent to the votes of ten residents of an urban county. The result, according to *Gray* v. *Sanders*, obviously would be unconstitutional. But is the result any different if the rural county is given five extra representatives to elect, and the urban county is alloted only one-half of its proportional share of representatives? The consequence, in either case, is that the voter in the rural county has ten times the political power of the urban voter. This is the "invidious discrimination" that the post-*Baker* cases condemn.

(Footnote continued from preceding page)

and Warehouse Commission; *Mississippi:* Commissioner of Insurance, Land Commissioner, Highway Commissioner, Public Service Commissioner; *Montana:* Railroad and Public Service Commissioner, members of Railway and Public Service Commission; *Nebraska:* members of Railway Commission, University Board of Regents members, State Board of Education members, Railway Commissioner; *Nevada:* State Printer, Mine Inspector, members of Board of Regents of State University; *New Mexico:* Commissioner of Public Lands, Corporation Commissioner; *North Carolina:* Commissioner of Insurance, Commissioner of Agriculture; *North Dakota:* Commissioner of Insurance, Commissioner of Agriculture and Labor, Public Service Commissioner; *Oklahoma:* State Examiner and Inspector, Chief Mine Inspector, Commissioner of Charities and Corrections, Commissioner of Insurance, Corporation Commissioner, Clerk of Supreme Court and Court of Criminal Appeals; *Pennsylvania:* Secretary of Internal Affairs; *South Carolina:* Adjutant and Inspector General, Commissioner of Agriculture; *South Dakota:* Commissioner of School and Public Lands, Public Utilities Commissioner, members of Public Utilities Commission; *Tennessee:* Public Service Commission members; *Texas:* Commissioner of the General Land Office, Railroad Commission members, Commissioner of Agriculture, Railroad Commissioner; *Washington:* Commissioner of Public Lands, Insurance Commissioner; *West Virginia:* Commissioner of Agriculture. Source: Council of State Governments, *Book of the States* (1958-1963).

What is involved here is not a "difference of political *initiative* as between . . . thinly populated counties and those having concentrated masses," *Mac Dougall* v. *Green*, 335 U. S. 281, 284 (emphasis supplied), but a deliberate shifting of the state's lawmaking functions to representatives of a minority of the state. Remarkably, not the slightest evidence has been offered to show that this minority is more capable than the majority of acting in the state's best interests.

It represents a complete misconception of the way our lawmaking system operates to suggest that those voters who are seriously under-represented in the legislature are, nevertheless, not denied any significant voice in the government because they can look to the Governor for representation since he is elected on the basis of equality of voting power.[15] Our system of checks and balances compels the executive to adjust his program on any issue to meet the demands of the legislature. Thus any substantial loss of representation in the legislature is reflected in a loss of influence in the total governmental structure. It is voting power which represents—however indirect its effects may be—the final sanction of the public.

Any difference in the treatment of statewide officers and a legislature is explicable not on the ground of principle but on the basis of practical difficulty. It is much easier for the court to insure that votes for a single officer be counted with absolute equality than it is for it to do this in the case of a statewide body elected by districts. But such practical

---

[15] This is the essence of the suggestion made with respect to New York in the Note, *Baker* v. *Carr and Legislative Apportionments: A Problem of Standards*, 72 Yale L. J. 968, 1019-1027 (1963). It is made by denigrating the value of the right to vote in a somewhat more generalized and sophisticated way through an emphasis on the importance in our form of government of a variety of means other than the franchise for exercising influence and power. Bickel, *Reapportionment and Liberal Myths*, 35 Commentary 483 (1963); Neal, *Baker* v. *Carr: Politics in Search of Law*, 1962 The Supreme Court Review 252; *cf.* De Grazia, *Essay on Apportionment and Representative Government* (1963).

difficulties as exist do not require abandonment of the principle in the case of the legislature. Once a clear standard is enunciated, it can be expected that the states will attempt in good faith to comply. Where there are clear departures from the minimum constitutional standard, the courts can insure compliance.

Even though the Constitution fixes the standard, the states may meet it in a variety of ways. As this Court noted in *Ker* v. *California*, 374 U. S. 23, in connection with application of minimum constitutional search and seizure standards to the states under the due process clause of the Fourteenth Amendment:

> "While this Court does not sit as in *nisi prius* to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental—*i.e.*, constitutional—criteria established by this Court have been respected. The States are not thereby precluded from developing workable rules. . . . Such a standard implies no derogation of uniformity in applying federal constitutional guarantees but is only a recognition that conditions and circumstances vary just as do investigative and enforcement techniques." 374 U. S. at 34.

Apportionment must be based upon an attempt to make each person's vote for state legislative representatives the equal, as nearly as may be practicable, of any other vote. Nevertheless, the states may utilize a broad range of discretion in devising plans to meet this standard. Among the approaches possible are the following:

1. Allocation of representatives on the basis of population or number of voters.

2. Allocation of representatives to counties or cities or to other areas for reasons of administrative convenience

or because there is a unity or ease of communication that makes them natural centers for representation.

3. Use of reasonable intervals between apportionments which may result in some temporary malapportionment due to interim shifts in population.

Voting power may continue to be limited by a disqualification that bears some relation to the supposed ability to vote intelligently, as in a reasonable and fairly administered literacy test or in rules for minimum periods of residence designed to insure orderly conduct or reduce fraud in an election. *Lassiter* v. *Northampton County Election*, 360 U. S. 45. It may not be limited by criteria having no relation in fact to ability to exercise the franchise.

Present disqualifications constitute a violation of due process as well as equal protection of the laws. To satisfy the minimum test of due process, legislation must be based upon rational assumptions about facts requiring it and must serve an acceptable social purpose. As Professor Henkin has pointed out in another context:

> "Due process of law requires that legislation have a proper public purpose . . . [and] that means be reasonably related to public ends. Legislation cannot be based on unfounded assumptions about character and its corruption."
>
> Henkin, *Morals and the Constitution: The Sin of Obscenity*, 63 Colum. L. Rev. 391, 402 (1963).

The only hypothesis that could possibly support the discrimination here is that there is a clear superiority, as citizens, of voters in counties with relatively small populations. But the evidence on this score indicates that the hypothesis is contrary to the facts. See Table I, pages 16-17 and footnotes 8 and 9, *supra*.

Our fluid society encourages changing positions and shifting alliances. A citizen may be in a minority as a Negro, but in a majority in wanting aid to public education and in a minority again in wanting more public housing.

The unconstitutional weighting of some people's voting rights so that they have greater power in all groups in which they participate, distorts the democratic system. Denying other voters their equal voting power in any group in which they wish to participate, constitutes a violation of the Fourteenth Amendment.

The conclusion that the Constitution mandates equal voting power in electing the legislature eliminates, we submit, any principled ground for allowing discrimination as to one house. The inapplicability of the federal Senate analogy has been completely demonstrated. *Gray* v. *Sanders*, 372 U. S. 368. See also McKay, *Reapportionment and the Federal Analogy* (National Municipal League, Aug. 1962); The Twentieth Century Fund (Lewis), *One Man-One Vote*, 8-11 (1962). It has been explicitly rejected in a number of reapportionment cases. See *Sincock* v. *Duffy*, 215 F. Supp. 169, 186 (D. Del. 1963); *Jackman* v. *Bodine*, 78 N. J. Super. 414, 431, 188 A. 2d 642, 651 (Super. Ct. 1963); *Sims* v. *Frink*, 208 F. Supp. 431, 438 (M. D. Ala. 1962).

The United States Senate represented a compromise between sovereign states as a condition for their forming a Union. That exception is built into the federal Constitution. Counties, by comparison, are the creatures of the state, organized and reorganized for convenience in administration. New York was not created by any compact of sovereign counties. They can be divided, if additional assembly districts are not thereby created (New York Constitution, Article III, Section 5)—as was Nassau from Queens; and the legislature is empowered to "provide by law for the organization and government of counties." New York Constitution, Article IX, Section 1(b). The very definition of a county in Section 3 of the New York County Law, indicates its nature as a convenient administrative arm of the state:

> "A county is a municipal corporation comprising the inhabitants within its boundries and formed for

> the purpose of exercising such powers and discharging such duties of local government and administration of public affairs as may be imposed or conferred upon it by law."

The state's municipal policies in organizing local government cannot be used as the justification for denying personal rights and liberties guaranteed by the Constitution. *Gomillion* v. *Lightfoot*, 364 U. S. 339.

There is no inconsistency between the constitutional principle of equal voting rights and the common practice of utilizing a bicameral legislature. Whatever advantages accrue from differences between the two houses may be provided for by varying the size of each house and its powers and rules, as well as the terms of office and qualifications of its members. Differences in each house's tradition will emphasize their individuality and assure differences in approach to the legislative process. Furthermore, the selection of representatives from districts which of necessity are far apart in outlook, tradition and needs will continue to provide "a medley of voices from minor fractions of the population." Neal, *Baker* v. *Carr, Politics in Search of Law*, 1962 Supreme Court Review 252, 277. But each minor voice will not be artificially muted by denying it the representational voting power of other voices.

The position that equality of voting power is required in each house of the legislature has explicitly been embraced in *Sincock* v. *Duffy*, 215 F. Supp. 169 (1963), where the court, having determined that the House apportionment must be based upon population, wrote:

> "A House of Representatives elected on a strict population basis and a Senate elected on a strict area basis as provided by the 1963 Amendment could give the majority of the voters a veto power but it could not assure them legislative strength to take affirmative

action on measures which might be very necessary for the general welfare of the State.

"Such affirmative action must be rendered possible and, as we have already indicated, an apportionment should not be permitted that would allow a blockage of major legislation desired by the great majority of electors of Delaware to come to pass in the Senate. Effecting the will of the majority of the people of a State must be deemed to be the foundation of any apportionment plan." 215 F. Supp. at 190.

The same principle underlies the decision of the Michigan Supreme Court in *Scholle* v. *Secretary of State,* 367 Mich. 176, 116 N. W. 2d 350 (1962), on remand from the U. S. Supreme Court. The Michigan House of Representatives was already apportioned exactly according to population. Nevertheless, the state court held that the Senate must also be apportioned to afford equal representation.

Other answers to this problem of two houses have been suggested. Even those cases, however, which have proceeded on the ground that the population standard must be strictly applied to only one house, have recognized that very substantial discrepancies in the other house are not permitted. This stand was taken in *Baker* v. *Carr* on remand, 206 F. Supp. 341. The existing apportionment for the House of Representatives recognized a "two-thirds" principle, whereby a county having only two-thirds the number of voters necessary for a representative would nevertheless be allotted a representative. The court said:

". . . we are of the opinion that if the two-thirds principle should be applied and used in apportioning seats in the House of Representatives, either by applying it to counties or floterial districts, or to both, then it would follow that the Senate would have to be apportioned on the basis alone of numbers of qualified voters. Contrariwise, if the Senate should be apportioned on an equitable and rational basis not fully related to voting strength, it would be necessary to ap-

portion the House of Representatives on the basis of numbers of qualified voters alone, without regard to the two-thirds principle whether applied to counties or districts or both." 206 F. Supp. at 349.

Similarly, in *Jackman* v. *Bodine*, 78 N. J. Super. 414, 188 A. 2d 642 (Super. Ct. 1963), some inequities in representation in the New Jersey Senate were upheld because the state Assembly was apportioned strictly on the basis of population.

Whichever position be taken with respect to the issue of bicameral legislatures, New York's present system of apportionment is indefensible. The house which comes closest to being representative of population is the Senate where the discrepancies are, and will be, more than 2½ to 1. See page 14, footnote 5, *supra*. Reapportionment here is obviously needed if population criteria are to control. In the Assembly, where all but two counties are given a minimum of one representative, the discrepancies are now as high as 21 to 1 and, under the forthcoming reapportionment they will be more than 10 to 1. See page 15, footnote 6, *supra*. This is too great a discrepancy under any test, particularly since simple combining of a relatively few counties can drastically reduce the ratios.[16] This practice is presently accepted in New York; Hamilton and Fulton Counties presently share an assemblyman and many of the counties share a senator (R. 227-229).

Far less difficulty is to be expected in enforcing a clear, consistent standard for apportionment based upon population than, for example, in applying standards to search and seizure or confession cases which arise under the due

---

[16] See Brief of Paul R. Screvane, *et al.*, Appellees in Support of Appellants at pages 93-96, for an illustration of one suggestion for retaining the present size and basic structure of the New York Legislature. While this change would immensely improve the New York situation, we do not concede that it would satisfy constitutional standards for equality of voting power.

process clause. Because of the consensus in favor of this standard of equal voting power, which has already been noted, New York as well as other states can be expected to comply without court compulsion. Once the present New York Constitutional provisions are declared invalid, the New York legislature will be free to act in accordance with federal constitutional standards.

B. The New York system of apportionment necessarily leads to invidious discrimination.

Even if this Court does not adopt a standard of equality according to population—under which New York's apportionment scheme would clearly be unconstitutional—invidious discrimination by any possible standard has been shown. There is no constitutionally valid justification for the large variations in voting power between residents of more populated areas and those of less-populated areas.

Many of the recent lower court decisions have formulated the rule that any substantial disparity in representation constitutes prima facie invidious discrimination. "It has been widely accepted that proof of a very substantial disparity in representation is sufficient to establish a prima facie case of invidious discrimination." *Davis* v. *Synhorst*, 217 F. Supp. 492, 497 (S. D. Iowa 1963). See also *Sincock* v. *Duffy*, 215 F. Supp. 169 (D. Del. 1963). *Maryland Committee for Fair Representation* v. *Tawes*, 228 Md. 412, 180 A. 2d 656 (1962); *Harris* v. *Shanahan*, No. 90, 476, Dist. Ct. Shawnee County, Kansas, May 31, 1962; *Lisco* v. *McNichols*, 208 F. Supp. 471 (D. Colo. 1962); *Thigpen* v. *Meyers*, 211 F. Supp. 826 (W. D. Wash. 1962); *Toombs* v. *Fortson*, 205 F. Supp. 248 (N. D. Ga. 1962); *Sims* v. *Frink*, 208 F. Supp. 431 (M. D. Ala. 1962); *Mann* v. *Davis*, 213 F. Supp. 577 (E. D. Va. 1962).

Most of the cases do not attempt to draw the line at which invidious discrimination begins. Several cases do, however, assay a specification of the numerical dis-

parities which an apportionment may not exceed without rational justification. The line has been drawn at 2 to 1 in *Scholle* v. *Secretary of State*, 367 Mich. 176, 188, 116 N. W. 2d 350, 355 (1962); at 4 to 1 in *Sweeney* v. *Notte*, 183 A. 2d 296, 301 (R. I. 1962); and at 10 to 1 in *Moss* v. *Burkhart*, 207 F. Supp. 855, 891 (W. D. Okla. 1962).

Sincock v. *Duffy*, 215 F. Supp. 169 (D. Del. 1963), suggests a ratio of 2 to 1 as the limit of permissible inequality. Relying on a statistical study of apportionment cases, the Court asserted:

> "The standard most often used by the court is a comparison between the largest and smallest districts, according to population in relation to each other and the average or theoretically perfect district. These cases suggest that when the standard is equality of population, an apportionment plan resulting in one district containing more than double the population of another will be invalid." 215 F. Supp. at 190.

But the Court found even this ratio excessive, and required that disparities be decreased below the 1.5 to 1 ratio proposed by the plaintiffs. All of these lines of permissible disparity are crossed in New York.

C. No valid reason to depart from the standard of equal voting power in New York has been shown; no adequate excuse for the invidious discrimination against Nassau residents has been suggested.

Our submission is that no considerations other than those reflecting population with reasonable exactitude can find support in reason once the principle of equal voting rights is accepted. *Sincock* v. *Duffy*, 215 F. Supp. 169 (D. Del. 1963). See also the concurring opinion in *Scholle* v. *Secretary of State*, 367 Mich. 176, 243, 116 N. W. 2d 350, 381 (1962).

If any justification for departure from a population test is permitted, it must bear "some relevance to the purpose for which the classification is made."[17] *Walters* v. *City of St. Louis*, 347 U. S. 231, 237. See also *McGowan* v. *Maryland*, 366 U. S. 420, 425. The only justification for multiplying the voting power of rural residents is their superiority as voters. But, as has already been shown at pages 16 to 17, there is not the slightest reason to believe that residents of Nassau are inferior in this respect to residents of other areas of the state.

Neither the reasons given by the court below, nor any others which have been suggested, justify New York's discriminatory apportionment. The court below posed five "tests" for invidious discrimination: whether New York's law 1) is rational or arbitrary; 2) has an historical basis; 3) provides another remedy; 4) is based on geography; and 5) calls upon the court "to invalidate solemnly enacted State Constitutions and laws" (R. 304-305). None of these criteria has any relevance to this case.

The first and last would be inappropriate in any case. Whether the scheme is rational or arbitrary must depend on whether there is a constitutionally valid justification for it. No matter with what solemnity a state provision is adopted, if it is unconstitutional it cannot stand.

The court's second reason—history—is equally inappropriate. The fact that the discrimination was deliberate and has continued for many years is no justification for

---

[17] The New Hampshire court, for example, has upheld a scheme for the State Senate in which representation is apportioned according to the amount of taxes paid by each senatorial district. In fact, such a formula closely approximates equal representation: 45.3% of the population is necessary to elect a majority of the Senate. The plan is justified as a logical conclusion of the principle "no taxation without representation." *Levitt* v. *Maynard*, 104 N. H. 243, 182 A. 2d 897 (1962).

the deprivation today of the constitutional rights of people. *Brown* v. *Board of Education*, 347 U. S. 483. "The right to vote is personal," *United States* v. *Bathgate*, 246 U. S. 220, 227, and the fact that other voters in times past acquiesced in the denial of their own rights is no basis for denying rights to a voter today. Even an apportionment scheme which at its inception was intended to provide equal representation, may now frustrate that purpose because of population shifts.

> "The result is that what may have been a reasonable apportionment by population when the system was introduced has, through inaction, become an unreasonable system as related to population. . . .
>
> "Applying these historical facts to the test of indiviousness, we are unable to discern any justification for continuing this system merely because it has a historical basis in Georgia's political institutions. This is so, primarily, because while historically the statute and constitutional requirements remain substantially the same, the passage of time and changing living habits of the people have distorted it into something entirely different from what it was at its genesis."
>
> *Toombs* v. *Fortson*, 205 F. Supp. 248, 255 (N. D. Ga. 1962).

Moreover, a scheme which was originally approved by plebescite because, at the time, it afforded voters equal representation, may now be obsolete. *Davis* v. *Synhorst*, 217 F. Supp. 492 (S. D. Iowa 1963).

Availability of a political remedy through a constitutional convention—the court's fourth ground—is a doubtful reason to deny relief. *Baker* v. *Carr*, 369 U. S. 186, by failing to adopt Mr. Justice Frankfurter's dissent, in effect ruled that citizens are not limited to their political remedies.

Speaking of the right to equal representation, the court in *Moss* v. *Burkhart*, 207 F. Supp. 885 (W. D. Okla. 1962), pointed out:

> ". . . the right asserted here cannot be made to depend upon the will of the majority. It is founded in the Federal Statute, which gives redress for the deprivation of civil rights, including the integrity of the ballot." 207 F. Supp. at 894.

At best a referendum or constitutional convention is of doubtful utility. In Nebraska, where the initiative is available, the court did not feel it excused judicial action. The court held that the initiative was too costly, and too rarely successful to provide an adequate substitute for judicial relief. *League of Nebraska Municipalities* v. *Marsh*, 209 F. Supp. 189 (D. Neb. 1962).

In New York a constitutional convention in 1979—assuming it is approved by vote in 1977—is even more clearly an inappropriate remedy. All but fifteen delegates to a convention would be selected using the present malapportioned senatorial districts. New York Constitution, Article XIX, Section 2. Malapportionment would thus be permitted "to perpetuate the inequality of representation." *Davis* v. *Synhorst*, 217 F. Supp. 492, 499 (S. D. Iowa 1963).

The fact that a constitutional convention was not approved by the people in 1957 is of no significance. The reasons for that vote can not be known. See the discussion in Brief of Paul R. Screvane, *et al.*, Appellees in Support of Appellants at pages 77-90. As the Iowa District Court noted:

> "The fact that the people of Iowa have repeatedly [in 1930, 1940, 1950, and 1960] voted against a constitutional convention is persuasive, but not sufficient to establish their acceptance of the present apportionment. There is no possible way of knowing how many voters voted against the measure even though

> they regarded the present system as being unsatisfactory. . . . Quite possibly a significant number felt that a convention would be futile inasmuch as the details would be left to a malapportioned General Assembly."
>
> *Davis* v. *Synhorst*, 217 F. Supp. 492, 501 (S. D. Iowa 1963).

In the State of Washington, the initiative had been exercised just two years prior to the lawsuit to determine whether there should be a new apportionment. Although it was rejected by the voters, the court noted that the reasons behind that decision were obscure. The voters might not have liked the method of the proposed reapportionment, or might have misunderstood the choice. The court declared that they could not, thereby, be deprived of their "inalienable constitutional right of equal protection." *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962). That conclusion is particularly applicable to New York, where rejection of a convention in 1957 may merely indicate a recognition of the futility of such a convention, in which representation would be based upon the present inequitable scheme for senatorial districts.

The one remaining reason given for the decision of the court below is based upon geography. This reason would, we contend, be inadmissible in any case. The statement of principles at a conference of research scholars and political scientists pithily summarizes the matter:

> ". . . acres do not vote; nor do trees. When a sparsely settled area is given as many representatives as one much more populous, it simply means that the *people* in the sparse area have more representation. No matter how stated, it is people who choose the representatives."
>
> The Twentieth Century Fund (Lewis), *One Man—One Vote*, 5 (1962) (emphasis in original).

This factor of geography is a mere rationalization for discrimination. As the District Court for Delaware indicated:

> ". . . there is no geographical feature which prevents the residents of any County from easy access to those of another, or which obstructs face-to-face communications between the citizens and members of the General Assembly. . . . Indeed . . . [it is] clear that in respect to geographical features only extraordinary ones like the inaccessibility of the upper Michigan Peninsula to the rest of that State could justify the election of additional representatives to the lower House of a legislature and the consequent dislocation of the principle of strict representation of population therein."
>
> *Sincock* v. *Duffy*, 215 F. Supp. 169, 187 (D. Del. 1963).

The mere fact that there are economic or geographic differences between districts does not of itself justify any inequalities in representation. *Lisco* v. *McNichols*, 208 F. Supp. 471 (D. Colo. 1962). In any case, extreme discrimination between districts, of the kind that exists in New York, cannot be justified on geographic or economic grounds. *Moss* v. *Burkhart*, 207 F. Supp. 885 (W. D. Okla. 1962).

The geographic argument was, nevertheless, strongly relied upon by the court below. The opinion of District Judge Levet as well as the concurring opinion of District Judge Ryan point out that the six counties in which the plaintiffs reside contain 56.2% of the population but only 3.1% of the area of the state (R. 313, R. 321). Despite their reliance on this factor, it is clear that New York's apportionment scheme operates in a purely mechanical way based only on population per county. Area does not enter into any computation. A county's representa-

tion is determined purely on the basis of its population and not on the basis of such factors as its area or population per square mile or internal accessibility or terrain. The table below, based on 1950 population and 1953 apportionment, illustrates what a reading of the New York provisions demonstrates—that differences in area are irrelevant under New York's apportionment scheme (R. 227-229). Counties with the same low population receive the same number of representatives whether they are large in area or small in compass. Discrimination is not based upon acreage[16] or on convenience of communications within a voting district but upon a deliberate intent to favor counties with small populations.

TABLE 2

ABSENCE OF RATIONAL PLAN FOR APPLYING GEOGRAPHICAL FACTOR IN APPORTIONMENT

County	*Population*—1960 1950 population shown in parenthesis (R. 227-229)	*Area* Sq. Miles (R. 61)	*Population Per. Sq. Mile*	*Standard Metropolitan Areas* (R. 48)	*Present Apportionment* Assemblymen (R. 227-229)	Senators (R. 227-229)
Broome	209,597 (181,496)	710	295	with 100,000-250,000	2	1
Niagara	235,677 (184,161)	533	442	with 250,000 or more	2	1
Richmond	216,764 (185,032)	60	3613	with 250,000 or more	2	1
Cattaraugus) Chautauqua)	223,380 (200,154)	2415	92	None	2	1

The additional grounds—essentially geographic—given by District Judge Ryan for the decision below are equally insufficient as a basis for denying plaintiffs their constitutional rights. It is possibly true, as he pointed out, that urban representatives may not understand rural problems

[16] *Cf.* the Michigan constitution which does use area, equating voters with acres in a fixed proportion. 1963 Mich. Const., Article IV, Section 2.

(R. 322). But, of course, it is equally true that rural representatives may not comprehend urban and suburban difficulties. In any event, no one has suggested that rural voters be denied representatives in the legislature—but only that they not have their vote and power multiplied beyond their numbers. Concededly, a representative from a wine or potato growing district or a milk or garment producing area will be better able to urge the special interests of his constituents, but there is no inconsistency between this ability and the principle of equal voting rights.

Judge Ryan made the additional suggestion that "Representatives might not adequately represent localities which were not their home" (R. 322). No scheme, including the present one, can arrange matters so that representatives in a state as large as New York represent only their home community. As the court below itself pointed out, the present Fortieth Senatorial District is larger than Connecticut, and St. Lawrence County is larger than the State of Delaware (R. 313).

Finally, there is no reason in this case to avoid "the intervention of federal equity power" (R. 312) because of any supposed difficulties in providing a remedy. There is not the slightest reason to suspect that the legislature in New York will not respond promptly and adequately to a court's decree annulling the present system of planned malapportionment.[19]

Even without the benefit of a definitive statement of standards in *Baker* v. *Carr*, the lower courts have had no great difficulty in finding appropriate remedies. Given a definite standard, the legislatures and courts can quickly solve the problem of malapportionment.

---

[19] Governor Rockefeller announced that he would not ask the Legislature to act on reapportionment until after this Court had ruled. N. Y. Times, June 11, 1962, page 26, columns 1-2.

CONCLUSION

For the foregoing reasons, the judgment of the Court below should be reversed and the case remanded with a direction to grant the relief sought in complaint.

Respectfully submitted,

BERTRAM HARNETT,
County Attorney of Nassau County,
Attorney for Eugene H. Nickerson, Appellee.

JACK B. WEINSTEIN,
of Counsel.

September 9, 1963.

LIBRARY

Office-Supreme Court, U.S.
FILED
SEP 9 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 20—WMCA, INC., ET AL., *Appellants, vs.* CAROLINE K. SIMON, SECRETARY OF STATE, ET AL., *Appellees.*

On Appeal from the United States District Court for the Southern District of New York

No. 29—THE MARYLAND COMMITTEE FOR FAIR REPRESENTATION, ET AL., *Appellants, vs.* J. MILLARD TAWES, GOVERNOR, ET AL., *Appellees.*

On Appeal from the Court of Appeals for Maryland

No. 23—B. A. REYNOLDS, JUDGE OF PROBATE, ET AL., *Appellants, vs.* M. O. SIMS, ET AL., *Appellees.*

No. 27—DAVID J. VANN AND ROBERT S. VANCE, *Appellants, vs.* BETTYE FRINK, SECRETARY OF STATE, ET AL., *Appellees.*

No. 41—JOHN W. MCCONNELL, JR., ET AL., *Appellants, vs.* BETTYE FRINK, SECRETARY OF STATE, ET AL., *Appellees.*

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division

No. 69—LEVIN NOCK DAVIS, SECRETARY, STATE BOARD OF ELECTIONS, ET AL., *Appellants, vs.* HARRISON MANN, ET AL., *Appellees.*

On Appeal from the United States District Court for the Eastern District of Virginia

---

BRIEF *AMICI CURIAE* IN NOS. 20 AND 29 AND MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE* IN NOS. 23, 27, 41 AND 69 FOR THE AMERICAN JEWISH CONGRESS, AMERICAN CIVIL LIBERTIES UNION AND N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

LEO PFEFFER,
Attorney for American Jewish Congress,
15 East 84th Street,
New York 28, New York,

MELVIN L. WULF,
Attorney for American Civil Liberties Union,
156 Fifth Avenue,
New York 10, New York,

JACK GREENBERG,
Attorney for N. A. A. C. P. Legal Defense and Educational Fund, Inc.,
10 Columbus Circle,
New York 19, New York,

Amici Curiae.

ROBERT B. MCKAY,
Of Counsel.

TABLE OF CONTENTS

	PAGE
MOTION	1
BRIEF	6
THE QUESTION TO WHICH THIS BRIEF IS ADDRESSED	6
STATEMENT	6
SUMMARY OF ARGUMENT	11
ARGUMENT	17
I—The Wide Disparity in the Effectiveness of the Votes Cast in the States Affected by the Instant Cases is a Denial of the Equal Protection of the Laws Guaranteed Against State Abridgement by the Fourteenth Amendment	17
A. The discrimination arising out of the unequal apportionment in each of the cases before this Court is both gross and arbitrary	17
1. The gross discrimination against urban and suburban areas	17
2. The arbitrary discrimination resulting from "crazy-quilt" patterns of apportionment	20
B. Inequality of voter representation deprives individual voters of the equal protection of the laws	23
1. The right to vote	23

PAGE

2. Impairment of the state legislative process 25

3. Legislative stalemate 26

4. Undermining of the federal system of government 28

II—The Ordinary Presumption of Validity of State Constitutional and Statutory Provisions is Overcome by a Showing of Gross Inequalities in Voter Representation, and Thereafter the Burden of Justification Rests Upon the States 29

III—The Justifications Advanced by State Officials for the Apportionment Plans Challenged in These Cases are Insufficient to Overcome the Showing of Gross Inequality Demonstrated in Each of the Cases Before the Court 34

A. Area 34

B. History 36

C. The Federal Analogy 40

D. Availability of the Initiative 46

E. Governmental Boundaries 48

CONCLUSION 52

TABLE OF AUTHORITIES

Cases:

	PAGE
Baker v. Carr, 369 U. S. 186 (1962)	3, 6, 21, 23, 29, 36
Baker v. Carr, 206 F. Supp. 341 (M. D. Tenn. 1962)	41, 49, 50
Brown v. Board of Education, 347 U. S. 483 (1954)	30
Caesar v. Williams, 371 P. 2d 241 (Ida. 1962)	33, 41
Davis v. Synhorst, 217 F. Supp. 492 (S. D. Iowa 1963)	32, 33, 41, 47, 49
Eskridge v. Washington State Prison Bd., 357 U. S. 214 (1958)	30
Gayle v. Browder, 352 U. S. 903 (1956)	30
Goesaert v. Cleary, 335 U. S. 464 (1948)	30
Gomillion v. Lightfoot, 364 U. S. 339 (1960)	24, 44
Goss v. Board of Educ., 373 U. S. 683 (1963)	30
Gray v. Sanders, 372 U. S. 368 (1963)	3, 24, 26, 27, 38
Griffin v. Illinois, 351 U. S. 12 (1956)	30
Hunter v. City of Pittsburgh, 207 U. S. 161 (1907)	44
Jackman v. Bodine, 188 A. 2d 642 (N. J. Ch. 1962)	41, 49
Johnson v. Virginia, 373 U. S. 61 (1963)	30
Kotch v. Board of River Port Pilot Comm'rs, 330 U. S. 552 (1947)	30
League of Nebraska Municipalities v. Marsh, 209 F. Supp. 189 (D. Neb. 1962)	41, 47
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911)	29
Lisco v. McNichols, 208 F. Supp. 471 (D. Colo. 1962)	32, 41, 50

PAGE

1962) 32, 41, 47, 50
MacDougall v. Green, 335 U. S. 281 (1948) 5, 35, 50
Mann v. Davis, 213 F. Supp. 577 (E. D. Va. 1962) 20, 33
37, 41, 44, 45, 50
Maryland Comm. For Fair Representation v. Tawes,
229 Md. 406, 184 A. 2d 715 (1962) 38, 41, 48, 49
Mayor & City Council v. Dawson, 350 U. S. 877 (1955) 30
Mikell v. Rousseau, 183 A. 2d 817 (Vt. 1962) 41, 50
Moss v. Burkhart, 207 F. Supp. 885 (W. D. Okla.

Nashville, C. & St. L. Ry. v. Browning, 310 U. S. 362
(1940) 29, 30
Nolan v. DiSalle —— F. Supp. —— (S. D. Ohio, June
12, 1963) 41

Oyama v. California, 332 U. S. 633 (1948) 30

Peterson v. City of Greenville, 373 U. S. 244 (1963) 30

Railway Express Agency v. New York, 336 U. S. 106
(1949) 30

Scholle v. Hare, 367 Mich. 176, 116 N. W. 2d 350
(1962) 32, 41, 47, 48, 50
Sherbert v. Verner, 374 U. S. 398 (1963) 32
Siebold, Ex Parte, 100 U. S. 371 23
Sims v. Frink, 208 F. Supp. 431 (M. D. Ala. 1962) 19, 21
37, 41, 44, 50
Sincock v. Duffy, 215 F. Supp. 169 (D. Del. 1963) . 32, 41
44, 49, 50
Skinner v. Oklahoma, 316 U. S. 535 (1942) 30
Smith v. Allwright, 321 U. S. 649 (1944) 24
Sobel v. Adams, 208 F. Supp. 316 (S. D. Fla. 1962) 33
41, 49
South v. Peters, 339 U. S. 276 (1950) 5
Speiser v. Randall, 357 U. S. 513 (1958) 31
Staub v. Baxley, 355 U. S. 313 (1958) 31

PAGE

State Athletic Comm. v. Dorsey, 359 U. S. 533 (1959) 30
Swafford v. Templeton, 185 U. S. 487 (1902) 24
Sweeney v. Notte, 183 A. 2d 296 (R. I. 1962) 41

Takahashi v. Fish and Game Comm'n, 334 U. S. 410 (1948) 30
Thigpen v. Meyers, 211 F. Supp. 826 (W. D. Wash. 1962) 32, 33, 47, 50
Tigner v. Texas, 310 U. S. 141 (1940) 29
Toombs v. Fortson, 205 F. Supp. 248 (N. D. Ga. 1962) 41, 47
Tot v. United States, 319 U. S. 463 (1943) 31
Turner v. Memphis, 369 U. S. 350 (1962) 30

United States v. Bathgate, 246 U. S. 220 (1918) 23
United States v. Carolene Products Co., 304 U. S. 144, 152 n. 4 (1938) 31
United States v. Classic, 313 U. S. 299 23
United States v. Moseley, 238 U. S. 383 23
United States v. Saylor, 322 U. S. 385 23

Watson v. City of Memphis, 373 U. S. 526 (1963) 30
Wiley v. Sinkler, 179 U. S. 58 (1900) 24
Williamson v. Lee Optical, Inc., 348 U. S. 483 (1955) 30
Wisconsin v. Zimmerman, 209 F. Supp. 483 (W. D. Wis. 1962) 41

Yarbrough, Ex Parte, 110 U. S. 651 (1884) 24
Yick Wo v. Hopkins, 118 U. S. 356 (1886) 30, 31, 32

Statutes:

	PAGE
Baker, Rural versus Urban Political Power (1955)	19
Constitution of the State of Alabama: Art. 8, Sec. 200	36
Constitution of the State of Maryland: Section 2	19
Constitution of the State of Michigan (1962): Art. IV, Sec. 2	34
Constitution of the State of New York (1894)	24, 37
Constitution of the State of Virginia: Sections 40-43	10
David and Eisenberg, Devaluation of the Urban and Suburban Vote 3, vol. I, 1961	18, 20
vol. II, 1962	19
4 Revised Records of the Constitutional Convention of the State of New York, 10 (1900)	24
42 U. S. C. §1983 (Civil Rights Act)	6, 9, 10
42 U. S. C. §1988 (Civil Rights Act)	6, 10
Goldberg, The Statistics of Malapportionment, 72 Yale L. J. 90 (1962)	18, 50
Hacker, Congressional Districting (1963)	19, 39
House Comm. on Government Operations, Federal-State-Local Relations: Federal Grants-in-Aid, H. Rep. No. 2533, 85th Cong., 2d Sess. 47-49 (1958)	17
Lewis, Legislative Apportionment and the Federal Courts, 71 Harv. L. Rev. 1057 (1958)	18
1963 Equal Accommodations Bill	26

PAGE

Silva, Apportionment in New York, 30 Fordham L. Rev. 581 (1962) 24

The Editors of Fortune, The Exploding Metropolis 1 (1957) 18
The Northwest Ordinance of 1787 39
28 U. S. C. §1343 ..... 6, 10
28 U. S. C. §2201 10

United States Constitution:
Fourteenth Amendment 7, 19
Art. IV, Sec. 3 44
U. S. Comm'n on Intergovernmental Relations, Report to the President (1955) 17, 25

Other Authorities:

Advisory Commission on Intergovernmental Relations, December 1962 Report on Apportionment of State Legislatures (p. 67) 51
Alabama's Unrepresentative Legislature, 14 Ala. L. Rev. 403 (1962) 36

Baker, State Constitutions: Reapportionment 47 [National Municipal League Pamphlet 1960] 46

Letter to William King, Nov. 19, 1819, Jefferson Papers, Lib. of Cong., vol. 216, p. 38616 42

McCloskey, The Reapportionment Case, 76 Harv. L. Rev. 54 (1962) 46

National Municipal League, Model State Constitution, 42-44 (6th ed. 1963) 45
Note, Baker v. Carr and Legislative Apportionments: A Problem of Standards, 72 Yale L. J. 968 (1963) 47

PAGE

Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 254 Ala. 185, 47 So. 2d 714 (1950) 37

Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955, 263 Ala. 153, 81 So. 2d 881 (1955) 37

Radoff, The Old Line State 64 (1956) 38

Report of the Advisory Comm. on Intergovernmental Relations, Apportionment of State Legislatures, 14 n. 55 (1962) 43

Senate Reapportionment—The Maryland Experience, 31 Geo. Wash. L. Rev. 812 (1963) 26

Sindler, Baker v. Carr: How to "Sear the Conscience" of Legislators, 72 Yale L. J. 23 (1962) 46

Tyler and Wells, "New York: 'Constitutionally Republican,'" in the Politics of Reapportionment, ch. 13 (1962) 27

IN THE

Supreme Court of the United States

October Term, 1963

No. 20—WMCA, Inc., et al., *Appellants, vs.* Caroline K. Simon, Secretary of State, et al., *Appellees.*

On Appeal from the United States District Court for the Southern District of New York

No. 29—The Maryland Committee For Fair Representation, et al., *Appellants, vs.* J. Millard Tawes, Governor, et al., *Appellees.*

On Appeal from the Court of Appeals for Maryland

No. 23—B. A. Reynolds, Judge of Probate, et al., *Appellants, vs.* M. O. Sims, et al., *Appellees.*

No. 27—David J. Vann and Robert S. Vance, *Appellants, vs.* Bettye Frink, Secretary of State, et al., *Appellees.*

No. 41—John W. McConnell, Jr., et al., *Appellants, vs.* Bettye Frink, Secretary of State, et al., *Appellees.*

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division

No. 69—Levin Nock Davis, Secretary, State Board of Elections, et al., *Appellants, vs.* Harrison Mann, et al., *Appellees.*

On Appeal from the United States District Court for the Eastern District of Virginia

BRIEF *AMICI CURIAE* IN NOS. 20 AND 29 AND MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE* IN NOS. 23, 27, 41 AND 69 FOR THE AMERICAN JEWISH CONGRESS, AMERICAN CIVIL LIBERTIES UNION AND N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The annexed brief *amici curiae* is filed on behalf of the the American Jewish Congress, American Civil Liberties Union, and the N. A. A. C. P. Legal Defense and Educational Fund, Inc. in *WMCA, Inc.* v. *Simon*, No. 20, and the *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, pursuant to consent of the parties, submitted herewith.

Consent was withheld by appellants or by appellees in each of the closely related cases, *Reynolds* v. *Sims*, No. 23, *Vann* v. *Frink*, No. 27, *McConnell* v. *Frink*, No. 41, and *Davis* v. *Mann*, No. 69. This motion for leave to file the annexed brief *amici curiae* pursuant to Rule 42 is filed in those cases because of the difficulty of commenting on the first two named cases without being free also to comment on the last four. The six cases should be regarded as a unit because they represent various and interrelated facets of what is in reality a single issue, the definition of equal protection of the laws in the context of state legislative apportionment and districting.

Interest of *Amici*

The American Jewish Congress is an organization of American Jews which has as one of its aims the promotion of civil and political equality for all Americans.

The American Civil Liberties Union is a nation-wide nonpartisan organization engaged solely in the defense of individual liberties particularly as set forth in the United States Constitution and the amendments thereto.

The N. A. A. C. P. Legal Defense and Educational Fund, Inc. is an organization dedicated to the task of broadening democracy and securing equal justice under the Constitution and laws of the United States.

The noting of jurisdiction by the Court in these cases is of special importance in view of the decision in the 1961 Term of *Baker* v. *Carr*, 369 U. S. 186 (1962), and the decision in the 1962 Term of *Gray* v. *Sanders*, 372 U. S. 368 (1963). *Baker* v. *Carr* was a door-opening decision which confirmed the important proposition that fourteenth amendment claims of impairment of the right of political franchise, as a result of malapportionment of state election districts, are justiciable in the federal courts. This Court did not at that time suggest the precise standards against which such claims should be tested beyond noting that "judicial standards under the Equal Protection Clause are well developed and familiar * * *." 369 U. S. at 226. There was also no occasion for the Court in *Baker* to specify appropriate remedies where invalid apportionment is found, beyond the observation that "we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found * * *." *Id.* at 198.

In *Gray* v. *Sanders*, which was not, strictly speaking, an apportionment case, this Court made it clear that, at least in the context of a statewide primary election, full equality of voting rights is required by the equal protection clause of the fourteenth amendment. As Mr. Justice Douglas noted, the controlling principle must be "one person, one vote." 372 U. S. at 381. Justices Stewart and Clark, concurring, agreed upon the primacy of the equal protection principle in that situation when they referred to "one voter, one vote." *Id.* at 382.

The cases now before the Court, from Alabama, Maryland, New York, and Virginia, offer an appropriately wide spectrum of factual situations so that it will be possible for the Court to give meaning to the equal protection command

of the fourteenth amendment. Plaintiffs in each case allege discrimination against voting in the more populous areas, whether intentional or more or less accidental. The cases differ in the degree of population disparity among election districts and in the source of the preference for one class of voters against other classes, which sometimes arises out of state constitutional requirements, sometimes out of statutory provisions, and sometimes out of legislative failure to act where, as a matter of state law, reapportionment is a periodic legislative obligation. But in all cases alike the central issue is one of differentiation among voters on bases other than population.

Each of the *amici* has a deep concern with protection of the right of franchise as the only sure preservative of representative democracy. They are accordingly pledged to the elimination of all interference with the free exercise of the franchise. The concern of the *amici* extends equally to any limitation on the right of franchise, whether the fact of unequal treatment derives from an accident of history or from an explicit intention to prefer one class at the expense of another. More specific focus for this generalized concern develops out of the fact that the ordinary pattern of voter discrimination, certainly in all the cases now before the Court, works to the disadvantage of urban and suburban areas.

Each of the *amici* has a special interest in assuring equal recognition for the social, economic, and political interests of minority groups that have been particular targets of majority discrimination, whether on grounds of race, religion, national origin, or because of the expression of unpopular political beliefs. These minority groups tend to concentrate in the more populous areas, perhaps because they find there greater numbers with like interests, possibly

because they can in the cities achieve greater anonymity, or simply because the cities have ordinarily given more hospitable shelter to minority-interest groups. Whatever the reason, the observed fact is that minority groups cluster in the cities. Cf. *MacDougall* v. *Green*, 335 U. S. 281, 288-89 (Douglas, Black, and Murphy, JJ., dissenting); *South* v. *Peters*, 339 U. S. 276, 278-79 (1950) (Douglas and Black, JJ., dissenting). The *amici* are accordingly especially sensitive to discrimination against the urban voter because of the resulting partial disfranchisement of minority groups.

WHEREFORE, it is respectfully prayed that the annexed brief be read not only in relation to the cases in which consent has been secured, *WMCA, Inc.* v. *Simon*, No. 20, and *The Maryland Committee for Fair Representation* v. *Tawes*, No. 29, but as well in relation to the cases in which consent has been withheld, *Reynolds* v. *Sims*, No. 23, *Vann* v. *Frink*, No. 27, *McConnell* v. *Frink*, No. 41, and *Mann* v. *Davis*, No. 69.

Respectfully submitted,

LEO PFEFFER,
Attorney for American Jewish Congress,
15 East 84th Street,
New York 28, New York,

MELVIN L. WULF,
Attorney for American Civil Liberties Union,
156 Fifth Avenue,
New York 10, New York,

JACK GREENBERG,
Attorney for N. A. A. C. P. Legal Defense and Educational Fund, Inc.,
10 Columbus Circle,
New York 19, New York,

ROBERT B. MCKAY,
Of Counsel.

Amici Curiae.

BRIEF

The Question to Which This Brief is Addressed

This brief is addressed to the single question whether the equal protection of the laws clause of the fourteenth amendment should be defined, in the context of state legislative apportionment and districting, to require equality of voter representation in election districts in each house of a state legislature, except for minor variations based on mathematical necessity or in recognition of governmental interests of an exceptional character to be specifically justified in each case of deviation from full equality.

Statement

These six cases have been brought to this Court on appeal from final judgments of three-judge federal district courts sitting in Alabama (Nos. 23, 27, and 41), New York (No. 20), and Virginia (No. 69), and from the Maryland Court of Appeals (No. 29). These are the first cases since *Baker* v. *Carr* to bring before the Court the issue of fixing appropriate standards for application of the equal protection of the laws clause of the fourteenth amendment to state legislative apportionment and districting. The facts of the cases may be briefly summarized.

WMCA, Inc. v. *Simon*, No. 20, a class action, was brought under the Civil Rights Act (42 U. S. C. §§1983, 1988) and the parallel jurisdictional provision (28 U. S. C. §1343). The individual appellants are New York citizens and voters residing in the counties of New York, Bronx,

Kings, Queens, Suffolk, and Nassau. Appellant WMCA, Inc. is a New York corporation and taxpayer having its principal place of business in New York County. Appellees are various state, county and city officials. The complaint alleged that the apportionment and districting provisions in the state constitution and implementing statutes deprived appellants of due process and equal protection of the laws as guaranteed them by the fourteenth amendment to the United States Constitution.

The record shows that the state constitutional provisions regulating apportionment of the New York State Senate necessarily discriminate against the large urban areas. Thus, since 1953, the citizen population per senator in the five most populous counties (Bronx, Erie, Kings, New York, and Queens), based on the 1950 census, was 301,178, while the per senator ratio in the remaining counties was 195,859. Apportionment, pursuant to the 1960 census figures will be still more unfavorable to the six most populous counties (now including Nassau) than the present allocations.

The provisions governing seats in the State Assembly also favor the small counties. Under the 1960 census, the following results would be indicated. The smallest 44 counties would each receive one seat for an average of 62,765 citizen inhabitants per seat; three counties would receive 2 seats each for a total of 6, who would represent an average of 93,478 citizen inhabitants; and the fourteen most populous counties would be entitled to 100 seats for an average representation figure of 129,183 citizen inhabitants per seat.

The complaint alleged that application of the above provisions and the currently controlling statutes necessarily

results in gross disproportion between population and representation. (At present, the largest assembly district has 21 times as many citizens as the smallest; the largest senate district 3.9 times as many as the smallest.) Appellants offered to prove (1) that the apportionment formula in the 1894 constitution, which still controls, was intentionally adopted to limit the representation of urban residents on the ground, among others, that such residents were believed to be morally and intellectually inferior; and (2) that as a result appellants and others similarly situated suffer economic and other discriminations amounting to a denial of due process of law.

The three-judge court before which the case was heard concluded that there was no violation of the fourteenth amendment, saying in part that the New York apportionment provisions "are rational, not arbitrary, are of substantially historic origin, contain no geographical discrimination, permit an electoral majority to alter or change the same and are not unconstitutional under the relevant decisions of the United States Supreme Court." (208 F. Supp. 368, 380.)

The Maryland Committee for Fair Representation v. *Tawes*, No. 29, was filed in the appropriate Maryland state court by individual appellants, residents of the City of Baltimore and the four so-called "suburban counties," and by an unincorporated association, The Maryland Committee for Fair Representation. The complaint, filed against the governor and appropriate election officials, alleged severe underrepresentation of the City of Baltimore and of the four most populous counties in both houses of the state legislature. Based on 1960 census figures the counties of Anne Arundel, Baltimore, Montgomery, and Prince

Georges, and the City of Baltimore have 76 per cent of the state's population, but when the suit was initiated elected only 34 per cent of the state senators and only 49 per cent of the members of the house of delegates. (The latter proportion was increased to 55 per cent by legislative action during the course of the litigation, but the claim of invalid underrepresentation continues before the Court.) The largest senate district has 32 times the population of the smallest and, even after the 1962 changes in the house of delegates, the ratio there is 6 to 1.

The trial court held that the composition of the house of delegates was invalid, but that that of the senate was valid. Its decision as to the senate was affirmed by the state court of appeals by a four-to-three vote. The state court upheld election of state senators on a county basis (with additional senators for the City of Baltimore; but not in proportion to population) on the basis of state historical precedent and in reliance on the so-called federal analogy.

The three Alabama cases, *Reynolds* v. *Sims*, No. 23, *Vann* v. *Frink*, No. 27, and *McConnell* v. *Frink*, No. 41 (hereafter referred to collectively as *Reynolds* v. *Sims* or as the Alabama case) were brought as a single suit in behalf of duly qualified voters residing in Jefferson, Etowah, and Mobile Counties, as a class action against the Alabama secretary of state and other officials who are charged with responsibility for the election of members of the state legislature. The action was brought in August 1961 under the Civil Rights Act, 42 U. S. C. (1983, seeking a declaration of rights concerning apportionment of representatives and senators among the counties of Alabama and for such further relief as may be necessary to assure them in this respect the equal protection of the laws.

Alabama presented the familiar picture of legislative malapportionment due primarily to the failure of the legislature to reapportion for 60 years. Based on the 1960 census figures, the number of persons represented by members of the lower house in Alabama varied from 104,767 in Mobile County to 6,731 in Bullock County. The senatorial districts varied from 15,417 in District No. 16 (Lowndes County) to 634,864 in District No. 13 (Jefferson County).

The court below concluded that the existing apportionment was invalid. It further ruled that neither a proposed constitutional amendment nor legislation adopted in 1962 met the standards of the United States Constitution. However, it accepted the legislation in part as a temporary expedient for the 1962 election, pending later legislative correction. The court retained jurisdiction pending more equitable apportionment by the legislature.

Mann v. *Davis*, No. 69, was brought by appellees, qualified voters of Virginia residing in Arlington and Fairfax Counties and in the City of Norfolk, under the Civil Rights Act, 42 U. S. C. §§1983, 1988, asserting jurisdiction on the basis of 28 U. S. C. §1343 and the declaratory judgment act, 28 U. S. C. §2201. Appellants are the attorney general of Virginia and members of the state board of elections. In the original complaint appellees sought (1) a judgment voiding state laws apportioning the state legislature; (2) injunctive restraint of appellants from conducting elections under the laws; and (3) an apportionment by the court if the general assembly should fail, after a decree of injunction, to reapportion.

Acting under Sections 40-43 of the Virginia constitution, the Virginia general assembly, in 1962, established 36 senatorial districts, assigning them 40 senators, and 70 dis-

tricts for the house of delegates, distributing 100 seats among them. The 1962 acts produced disparities in terms of voter representation by each member of more than 2 to 1 in the senate and more than 4 to 1 in the house of delegates.

The three-judge district court found that population had historically been the principal factor in redistricting in Virginia, but that it was not the sole criterion under the equal protection clause. It declared that the proof of inequality of representation on the basis of population placed on the defendants the burden of explanation, a burden they had failed to meet. Accordingly, the majority of the court in a two-to-one decision, found "no rational basis for the disfavoring of Arlington, Fairfax and Norfolk." 213 F. Supp, 577, 585. A judgment was entered declaring the apportionment acts invalid and enjoining further proceedings thereunder, but staying operation of the injunction until January 31, 1963, to allow corrective action by the general assembly in special session. On December 15, 1962, this stay was further extended by the Chief Justice.

Summary of Argument

IA. Across the nation, in nearly every state, election districts for state legislative bodies are sadly askew in terms of equality of voter representation. This is markedly true in each of the four states, Alabama, Maryland, New York, and Virginia, whose apportionment systems are now before the Court. Whether tested in terms of the minority of the electorate empowered to elect a majority of legislators, in terms of excessively wide variations from the statistical average of voters in each election district,

or in relation to the ratio between the most populous and least populous election districts, the result is the same: Severe disparities in voter representation are manifest in each of these legislative bodies. Unfortunately, the situation in these states is not exceptional. It is all too typical of the widespread malapportionment which in 1963 infects the American state legislative process.

Almost without exception the voters most underrepresented in their state legislatures are city dwellers. However, population shifts predicted within the next decade are likely to confer that distinction upon the suburban areas.

Even among the generally overrepresented rural areas there is ordinarily, perhaps more by accident than by design, sharp differentiation in electoral representation even between election districts which are nearly alike in such measurable respects as population, area, and economic interests. This kind of "crazy quilt" inequality is present to some degree in all the cases now before the Court.

B. The harms attendant upon inequality of voter representation are first of all individual to the voters involved. Complainants in each case suffer personal denials of the equal protection of the laws by virtue of the impairment of their right of franchise as compared with others similarly situated.

A second harm, the collective result of the individual harms, derives from evident deterioration in the effectiveness of state legislative processes. Where the cities are underrepresented—the usual case—it is demonstrable that depite their larger proportionate contributions to the tax income of the state, their per capita returns are maintained at levels inadequate to deal satisfactorily with the complexities of urban life.

A third harm which frequently arises out of malapportioned legislatures is the legislative stalemate. Where members of both houses of a legislature predominantly represent minority interests in the state, but where the governor represents, as he ordinarily does, prevailing sentiments of the state as a whole, the sorry spectacle of the legislative impasse is the not uncommon result. Even if one house of the legislature is chosen essentially on a population basis, while the other is controlled by minority interests, similar difficulty in the legislative process is likely.

A fourth harm arising out of existing malapportionment is the distortion thereby occasioned to the whole concept of federalism and the American scheme of representative democracy. As state legislatures become increasingly moribund through legislative stalemate, and decreasingly responsive to legitimate claims that are effectively silenced as a result of severe underrepresentation, the affected units, usually the cities, turn elsewhere for relief. To some extent they may turn inward through the use of local tax levies, while resisting as firmly as possible otherwise legitimate state claims upon their resources. More significantly, they are likely to look outward, particularly seeking aid from the federal government. To the extent that cities find it necessary to reach over the governmental heads of their states, the whole structure of federalism is weakened.

II. The factual demonstration of gross inequality in voter representation in all these cases is undisputed, as indeed it is indisputable. As a result, the ordinary presumption of validity of state constitutional and statutory provisions is overcome, and defendant state officials must

justify all inequalities in terms of a rational state purpose that is neither grounded in intentional discrimination nor, whatever the intent, inherently discriminatory in its operation.

III. The justifications which are advanced in support of malapportioned state election districts are all insufficient to overcome the prima facie (or even per se) showing of gross inequality demonstrated in each of the cases before the Court.

A. It is plain that area as such does not deserve representation in state legislatures. However, it is also argued that rural interests should be represented out of proportion to population because rural voters are scattered over a substantial area as contrasted with the concentrated population clusters in the cities. The doubtful factual basis for this contention is an entirely insufficient justification for apportionment schemes that grossly reduce the voting strength of urban voters.

B. The appeal to history in justification for inequalities of voter representation cannot withstand analysis under the challenge of the equal protection clause of the fourteenth amendment, which must be read in the present tense. The long continuance, and even aggravation, of voting inequalities cannot be justified on the ground that the discriminated-against individuals and groups have lost their right of protest in the sands of time.

This is not to say that historic divisions of the state into local governmental units must be totally disregarded, but only that history as such does not in this context speak with a voice of logic.

C. Reliance on the so-called federal analogy must also be rejected. None of the reasons advanced in favor of one population-based house and one house chosen without regard to population is meritorious.

1. The Constitution itself rejects the relevance of the analogy to the method of selection of members of the two houses of Congress. History shows that the organization of the Senate was regarded as an exception to the equal protection principle, which is made binding on the states by the fourteenth amendment.

2. Reliance on the federal analogy is an after-the-fact rationalization for apportionment schemes that have little in common with the congressional plan of representation.

3. Counties and towns, unlike states, have no sovereign existence apart from the state which created them and which could at any time alter their boundaries or terminate their existence.

4. Where both houses of a state legislature are chosen on an equal-population basis they still serve separate functions as restraints upon each other. The terms of office are customarily different, as are the constituencies. Members of the more numerous house will ordinarily represent voters who are relatively homogeneous in their interests, while members of the less numerous house will necessarily represent a larger number of voters with more varied and heterogeneous interests.

5. There is no justification for allowing any minority interest group, whether rural or any other, to gain absolute control of a state legislature with concomitant power to enact legislation unacceptable to the majority.

D. Neither the availability of the initiative nor the opportunity for the convening of periodic or special constitutional conventions is an adequate substitute for the choice of state legislators on the basis of equality of voter representation. The right of each voter to have equal weight given to his vote along with other like-situated voters is present and permanent and should not be made subject to the costly uncertainties of the initiative. Moreover, the Constitution prohibits the imposition of inequalities even by majority vote.

E. The only argument which has any merit as a possible supplement—but not substitute for—the equal-population principle is the proposition that in drawing election districts some respect should be accorded to existing governmental boundaries. Two arguments in support of according this much deference to established state practice deserve mention: (1) Counties and other local governmental units continue to exercise some functions of government and thus may deserve a hearing in state legislative assemblies through legislators who will have those interests in mind. (2) Preservation insofar as possible of existing governmental lines can be helpful in preventing the harm of gerrymandering.

While these considerations may be given weight, they do not justify disregard of the equal-population principle which must remain primary in both houses of the state legislature. Accommodation to existing district lines is permissible only to the extent that it can be accomplished without significant deviation from the equal-population principle. Both objectives can be satisfied to a very substantial extent in redrawing district lines in each of the cases before the Court.

ARGUMENT

I

THE WIDE DISPARITY IN THE EFFECTIVENESS OF THE VOTES CAST IN THE STATES AFFECTED BY THE INSTANT CASES IS A DENIAL OF THE EQUAL PROTECTION OF THE LAWS GUARANTEED AGAINST STATE ABRIDGEMENT BY THE FOURTEENTH AMENDMENT.

A. The discrimination arising out of the unequal apportionment in each of the cases before this Court is both gross and arbitrary.

1. The gross discrimination against urban and suburban areas

In the second half of the twentieth century two disturbing features of the state legislative process in the United States have become commonplace. In the first place, official studies have confirmed what has long been common knowledge to the average citizen: most state legislatures are ill suited to the tasks of government with which they are charged. See, *e.g.*, U. S. Comm'n on Intergovernmental Relations, *Report to the President* 38-42 (1955); House Comm. on Government Operations, *Federal-State-Local Relations: Federal Grants-in-Aid*, H. Rep. No. 2533, 85th Cong., 2d Sess. 47-49 (1958). The malfunctioning of the state legislative process is particularly marked in the ordinary failure of state legislatures to deal adequately with the peculiarly complex problems of urban areas within their respective borders and with the still more acute problems of urban areas that lie in two or more states. *Ibid.*

See also The Editors of Fortune, *The Exploding Metropolis* 1 (1957).

In the second place, it is painfully apparent that state legislatures have become during the twentieth century progressively less representative of the majority of the electorate within their respective states. In the 99 state legislative bodies (all 50 states are bicameral except Nebraska) the population represented by each legislator ranged in 1960 from just over 2 to 1 to the incredible disparity of 987 to 1. David and Eisenberg, *Devaluation of the Urban and Suburban Vote* 3 (vol. I, 1961). When the 99 legislative bodies are viewed from another perspective, it appears that the percentage of the electorate which can elect a majority ranges from 8 per cent to 47.8 per cent in senate districts and from 12 per cent to 48.1 per cent in lower house districts. Goldberg, *The Statistics of Malapportionment*, 72 Yale L. J. 90, 100 (1962). Only five states are apportioned so that a majority of both houses are elected by over 40 per cent of the population. *Id.* at 90-91.

It is more than coincidence that these two propositions, the decline in the effectiveness of the state legislative process and the malapportionment of state legislatures, have traveled a parallel and converging course. As malapportionment has mounted across the nation, the failure of state legislatures to deal effectively with vital problems of state government has become more marked. See Lewis, *Legislative Apportionment and the Federal Courts*, 71 Harv. L. Rev. 1057, 1059-66 (1958). Yet, the alarming fact is that the pattern of state legislative malapportionment, apparently without exception, shows an unmistakable bias in favor of rural areas that continue to lose population and against urban (and now suburban) areas that continue

to gain population. See David and Eisenberg, *Devaluation of the Urban and Suburban Vote* (vols. I and II, 1961 and 1962); Baker, *Rural versus Urban Political Power* (1955); *Cf.* Hacker, *Congressional Districting* (1963).

The general pattern of discrimination against urban and suburban areas, outlined above, is manifested in each of the states in which the present cases arose. In the Alabama case, Nos. 23, 27 and 41, it was "generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes 'invidious indiscrimination' in violation of the Equal Protection Clause of the Fourteenth Amendment." *Sims* v. *Frink*, 208 F. Supp. 431, 435 (M. D. Ala. 1962). The facts outlined above (pp. 9-10) plainly compelled this conclusion.

In the Maryland case, No. 29, before the enactment of partial but inadequate remedial legislation in 1962, 76 per cent of the state population, located in the five most populous subdivisions of the state, elected only 34 per cent of the house of delegates and 49 per cent of the senate. No. 29, R. 189. Under section 2 of article III of the Maryland Constitution one senator is elected from each of the 23 counties of the state, and one senator from each of 6 legislative districts in the City of Baltimore. As a result less than 15 per cent of the population of Maryland can elect a majority of the state senate. A citizen's vote for a state senator in the most underrepresented county is worth 3 per cent of the vote of a resident in the most overrepresented and least populous county. R. 189. In the lower house, even under changes adopted in 1962, the five most populous political subdivisions, containing 76 per cent of the population, elect only 55 per cent of the members of the house of delegates.

In the New York case, No. 20, the data described above (pp. 6-8) plainly show the existing discrimination against urban and suburban areas. Moreover, the discrimination will steadily increase under the constitutional formula now in effect. The heavy disproportion between the representation accorded districts which are urban and those which are rural is emphasized by the fact that in only five other states are counties with population under 25,000 more over-represented than in New York. David and Eisenberg, *Devaluation of the Urban and Suburban Vote* 14-15 (vol. I, 1961).

In the Virginia case, No. 69, the three-judge district court, in holding invalid the state constitutional provisions for apportionment in both houses of the state legislature, found "no rational basis for the disfavoring of Arlington, Fairfax and Norfolk." *Mann* v. *Davis*, 213 F. Supp. 577, 585 (E. D. Va. 1962). The court noted that in the senate Arlington and Fairfax Counties and the City of Norfolk elected only five senators with an average population per senator of more than 150,000 while six other senators represented districts with an average population per senator of less than 75,000. The imbalance in the house of delegates was even more striking; each of the three delegates from Fairfax County represented a population of 95,064 while twenty delegates from other districts represented fewer than 30,000 each. *Id.* at 582-83.

2. The arbitrary discrimination resulting from "crazy-quilt" patterns of apportionment

To the extent that the unequal apportionment revealed in these cases does not show a consistent pattern of discrimination against urban and suburban areas, it is still

open to constitutional attack as being wholly unreasonable and arbitrary. The record is replete with instances of what have come to be known as "crazy quilt" inequalities, adopting the expressive phrase used by Mr. Justice Clark in his concurring opinion in *Baker* v. *Carr*, 369 U. S. 186, 254 (1962). Speaking of the absence of any discernible pattern in the Tennessee apportionment there at issue, he said:

> when the entire table [of population per legislator] is examined—comparing the voting strength of counties of like population as well as contrasting that of the smaller with the larger counties—it leaves but one conclusion, namely that Tennessee's apportionment is a crazy quilt without rational basis.

The same point can be made in connection with each of the apportionment schemes now before the Court.

Alabama: On the eastern edge of Alabama, near the Florida line, are clustered five counties, all largely rural in nature, with 1960 population figures as follows: Barbour (24,700); Bullock (13,462); Lee (49,754); Macon (26,717); and Russell (46,351). Before the 1962 judicial reapportionment, Barbour, Lee, and Russell counties were allotted two representatives and the others only one. Oddly enough, however, Macon County, with one representative, has a larger population than Barbour County, with two representatives. Moreover, the population per representative in Macon County is more than twice that of Barbour County. See *Sims* v. *Frink*, 208 F. Supp. 431, 447-49 (M. D. Ala. 1962). On the senate side the picture was not different in the same counties. District number 24 consists of Barbour County alone (24,700); district number 26 includes Bullock and Macon (40,179); and district number 27 in-

cludes Lee and Russell (96,105). *Id.* at 450. The arrangement makes no sense at all.

Maryland: Washington County, with a 1960 population of 91,219, has one senator, as does Queen Anne's County with a population of 16,569, and Baltimore County, with a population of about half a million. The three suburban counties of Anne Arundel, Montgomery and Prince Georges have three senators for about one million but the City of Baltimore, with a population of less than a million, has six senators. In this instance discrimination without rational pattern cuts both ways. The rural counties are favored over urban and suburban alike, while the exclusively urban counties are favored at the expense of the suburban. Even though this latter inequity results more from the accident of population growth than from invidious intent, the arrangement appears to be formless in the "crazy quilt" sense.

New York: Disparities of 2 to 1 exist, and are compelled by the state constitution, with respect to the size of assembly districts in a single county, entirely without regard to the rural or urban character of that county. This is the case, for example, in Onondaga County where the assembly districts range in size (on the basis of the still-controlling 1950 citizen population) from 83,613 to 167,226. No. 20, R. 283. Other examples of "crazy quilt" disparities in New York State are outlined in appellants' brief on the merits.

Virginia: Despite the division of some counties in the fixing of senate and house of delegates districts, and the use of floterial districts, adjacent districts with apparently similar voter compositions vary widely in terms of population represented by individual senators and delegates. To

give a single example: Two senatorial districts at the remote western tip of Virginia differ in population ratio by more than 2 to 1, despite the fact that they are adjacent and both are essentially rural. Lee and Scott Counties make up a senate district with a 1960 population of 51,637, while Buchanan, Russell, and Tazewell Counties, also cumulated into a single district, have a population of 107,805. If Russell, for instance, had been joined to Lee and Scott, the differential between the two districts would have been less than 5 per cent. No. 69, R. 12.

Again, it is apparent that the voter discriminations in each of these two cases, whether intentional or accidental, demonstrate in this respect also a violation of the equal protection clause of the fourteenth amendment.

B. Inequality of voter representation deprives individual voters of the equal protection of the laws.

1. The right to vote

This Court long ago recognized that "The right to vote is a personal right." *United States* v. *Bathgate*, 246 U. S. 220, 227 (1918). In *Baker* v. *Carr*, 369 U. S. 186, 208 (1962), Mr. Justice Brennan made the same point specifically in relation to apportionment:

> A citizen's right to vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution for a false tally, *cf. United States* v. *Classic*, 313 U. S. 299; or by a refusal to count votes from arbitrarily selected precincts, *cf. United States* v. *Moseley*, 238 U. S. 383, or by stuffing of the ballot box, *cf. Ex parte Siebold*, 100 U. S. 371; *United States* v. *Saylor*, 322 U. S. 385.

For other instances in which the Court has recognized that the right of franchise is entitled to protection against dilution or other unjustified impairment, see *Ex parte Yarbrough*, 110 U. S. 651 (1884); *Wiley* v. *Sinkler*, 179 U. S. 58 (1900); *Swafford* v. *Templeton*, 185 U. S. 487 (1902); *Smith* v. *Allwright*, 321 U. S. 649 (1944); *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960); and *Gray* v. *Sanders*, 372 U. S. 368 (1963).

Complainants in each of the cases before the Court have suffered personal and individual denials of the equal protection of the laws by virtue of the impairment of their right of franchise as compared with others similarly situated. There is reason to believe that that denial is at least in part deliberate—that state legislators have consciously reduced the weight of the urban and suburban vote.* But even if that were not so, the discrepancy in the value of the individual vote must be regarded as a denial of equal protection unless some rational explanation for it is offered. As we show below, in Point III, that has not been done.

---

* The three-judge court in the New York case, No. 20, excluded evidence, we believe erroneously, that would have shown that the present New York formula, based on the 1894 New York Constitution, was the result of a deliberate intent to discriminate against urban voters. No. 20, R. 140, 142, 143-46. That constitution was the first to depart from the equal-population principle (Silva, *Apportionment in New York*, 30 Fordham L. Rev., 581, 597-600 (1962); 31 *id.* 1, 2-13), and the reasons were made perfectly clear at the time. As one delegate put it, "* * * the average citizen in the rural district is superior in intelligence, superior in morality, superior in self-government, to the average citizen of the great cities * * * [and] your government will be safer in his hands than in the hands of the average citizen of the great cities * * *" (4 *Revised Records of the Constitutional Convention of the State of New York*, 10-11 (1900)).

2. Impairment of the state legislative process

A second harm that results from the malapportionment here complained of is damage to the state legislative process, on which success of a representative democracy must in large part depend. Because, as we have shown, malapportionment reduces the voice of the urban and suburban voters in their state government, the city dwellers and their compatriots in the nearby suburbs find that the communities in which they work and live are short-changed in a variety of ways at the hands of legislators who represent primarily rural voters.

It is common knowledge that in states with large metropolitan centers the cities contribute a larger per capita share of the total state revenues than do other areas. But the per capita return to the cities is ordinarily smaller than the proportionate return to the rural areas. The remedial steps taken by the cities have been twofold, both unfortunate for the integrity of the state governmental process. (1) The great cities have increasingly found it necessary to resort to extraordinary measures to help finance the slighted metropolitan needs, such as the 4 per cent sales tax in New York City. (2) The cities have more and more often taken their problems to the national government, seeking assistance in planning for and financing of housing, transportation, and schools, the three most costly and critical problems faced by every city. "Paradoxically enough, the interests of the urban areas are often more effectively represented in the national legislature than in their own state legislatures." U. S. Commission on Intergovernmental Relations, *Report to the President* 40 (1955).

Demonstration of discrimination against urban areas at the hands of malapportioned state legislatures is readily available. Evidence offered but excluded in the New York case, No. 20, would have shown that the malapportioned legislature in fact discriminated against urban residents in allocating tax revenues and distributing benefits. No. 20, R. 140, 142, 147-48.

Discrimination against the more populous areas is by no means confined to money matters. In Maryland, for example, the grossly unrepresentative state senate refused in 1963 to abandon the unit vote system even after the decision in *Gray* v. *Sanders*, 372 U. S. 368 (1963), invalidating an equivalent Georgia plan. The same body approved a congressional redistricting bill which provides a district for the Eastern Shore counties with a population of 243,570, while another district, including populous Montgomery County, will have 608,666 residents. Note, *Senate Reapportionment—The Maryland Experience*, 31 Geo. Wash. L. Rev. 812, 821 (1963). The Maryland legislature even demonstrates how racial discrimination may develop out of malapportionment. The 1963 Equal Accommodations bill contains exemptions for twelve counties, all rural. "A comparison of the counties exempted with population cannot fail to demonstrate in this case the invidious nature of the discrimination of minority rule and the denial of the equal protection of the laws." *Id.* at 822.

3. Legislative stalemate

Malapportionment frequently contributes to legislative stalemate, which may arise in at least two situations. First, if urban voters are discriminated against in both houses

of the state legislature, while the governor remains responsive to the electorate as a whole, he may exercise his powers of restraint, particularly by way of veto, as a check upon legislative disregard of the majority will. The issue takes on special significance in the light of *Gray* v. *Sanders*, 372 U. S. 368 (1963), in which this Court ruled explicitly that any state official selected on a state-wide basis, whether at a primary or general election, must be chosen on a strict one man-one vote basis without weighting for any special interests, rural or otherwise.

However fortunate it may be that the chief executive of the state, considering himself responsive to the whole electorate without favoritism to any special interest group, may restrain an unrepresentative and perhaps irresponsible legislature, this is nonetheless not effective government. Since the governor himself has no legislative authority, the most he can do is to oppose without necessarily being able to secure the enactment of any affirmative program. New York is a vivid example. It is a two-party state with a one-party legislature. Tyler and Wells, "New York: 'Constitutionally Republican,'" in *The Politics of Reapportionment*, ch. 13 (1962).

A second kind of legislative stalemate which may evolve out of malapportionment arises where one house of the legislature is chosen to some extent in accordance with the equal-population principle, while the other, selected without regard to population, considers itself primarily responsible to some special interest group, usually the rural voter. An especially striking illustration of the resulting difficulties is found in the 1963 session of the Maryland legislature. After the house of delegates had been reapportioned to conform in part to voter equality among election

districts, while the senate remained unchanged, a number of important pieces of legislation were stalled. See part III of the Brief of Appellants in the Maryland case, No. 29.

A legislature divided between its two houses on the essentials of legislative policy is no legislature at all. It is merely a platform for the ventilation of political controversy.

4. Undermining of the federal system of government

Malapportionment also threatens the concept of federalism which has always been central to the scheme of representative democracy in the United States. As state legislatures become increasingly moribund and less and less responsive to demands for legislative action, voters who have lost their chance for a meaningful hearing, and cities whose legitimate claims for assistance in solving problems of urbanization have been drowned in silence, turn elsewhere for assistance. Legislative refusal to act, or legislative impasse, invites an electorate bypass.

A fundamental premise of the American constitutional system is that the states are equal partners with the national government. The demand for states' rights makes no sense in the case of those states which have failed to satisfy their primary obligation of service to majority interests. Only when these needs are satisfied can the plea of states' rights become again the dignified and meaningful claim to separate sovereign rights that it should always have been rather than the strident and prideful cry it has sometimes seemed.

II

THE ORDINARY PRESUMPTION OF VALIDITY OF STATE CONSTITUTIONAL AND STATUTORY PROVISIONS IS OVERCOME BY A SHOWING OF GROSS INEQUALITIES IN VOTER REPRESENTATION, AND THEREAFTER THE BURDEN OF JUSTIFICATION RESTS UPON THE STATES.

"Judicial standards under the Equal Protection Clause are well developed and familiar * * *" *Baker* v. *Carr*, 369 U. S. 186, 226 (1962). The clause has developed over the years as a general restraint upon unreasonable classifications imposed by state authority. In this role it has been invoked in a number of diverse contexts. Analytically, however, the cases may be grouped into two principal categories, each of which has generated a somewhat different application of the equal protection concept. Indeed, one might almost say that there are two equal protection clauses or at least, since some kinds of preferential classification are more readily forbidden than others, there is something akin to a scale of preferences within the equal protection clause itself.

Where the state, in its police power capacity to regulate health, morals, and general welfare, imposes a classification scheme intended to regulate economic or social welfare matters, the coverage of "reasonableness" is comfortably loose, and there rests upon him who would challenge the classification a heavy burden in seeking to overcome the presumption of constitutionality. See, *e.g.*, *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61 (1911); *Tigner* v. *Texas*, 310 U. S. 141 (1940); *Nashville, C. & St.*

L. Ry. v. *Browning*, 310 U. S. 362 (1940); *Kotch* v. *Board of River Port Pilot Comm'rs*, 330 U. S. 552 (1947); *Goesaert* v. *Cleary*, 335 U. S. 464 (1948); *Railway Express Agency* v. *New York*, 336 U. S. 106 (1949); *Williamson* v. *Lee Optical, Inc.*, 348 U. S. 483 (1955). But where the classification impinges upon the "basic civil rights of man" (*Skinner* v. *Oklahoma*, 316 U. S. 535, 541 [1942]), the latent libertarianism that always lies close to the surface of equal protection emerges to overcome the presumption of constitutionality and to demand rigorous examination of the standards set.

The clearest case for absolute prohibition of all classification appears in the case of state-supported racial discrimination. *Brown* v. *Board of Education*, 347 U. S. 483 (1954); *Mayor & City Council* v. *Dawson*, 350 U. S. 877 (1955); *Gayle* v. *Browder*, 352 U. S. 903 (1956); *State Athletic Comm.* v. *Dorsey*, 359 U. S. 533 (1959); *Turner* v. *Memphis*, 369 U. S. 350 (1962); *Johnson* v. *Virginia*, 373 U. S. 61 (1963); *Peterson* v. *City of Greenville*, 373 U. S. 244 (1963); *Watson* v. *City of Memphis*, 373 U. S. 526 (1963); *Goss* v. *Board of Educ.*, 373 U. S. 683 (1963).

The equal protection clause has been given a near-absolutist reading in other areas where the issue involves the "basic civil rights of man." Discrimination on grounds of alienage has been frequently struck down on equal protection grounds. *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886); *Oyama* v. *California*, 332 U. S. 633 (1948); *Takahashi* v. *Fish and Game Comm'n*, 334 U. S. 410 (1948). See also *Skinner* v. *Oklahoma*, 316 U. S. 535 (1942); *Griffin* v. *Illinois*, 351 U. S. 12 (1956); *Eskridge* v. *Washington State Prison Bd.*, 357 U. S. 214 (1958).

The tension between these two sides of the equal protection clause is the specific issue of substance in the cases now before the Court. Shall the equal protection clause, in the face of proved impairment of the right of franchise as a result of gross inequalities in voter representation, be read to impose almost no restriction on the legislative power of classification, as in the state economic and social welfare cases? Or, remembering that the right of franchise is "a fundamental political right, because preservative of all rights" (*Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 [1886]), shall the equal protection clause be read to require equality in voter representation? We submit that established constitutional principles require that the first question be answered No and the second Yes.

It is now well established that "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution • • •," particularly in the case of "legislation which restricts • • • political processes • • •." *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 n. 4 (1938). Thus, with respect to restraints on freedom of expression, this Court said, in *Speiser* v. *Randall*, 357 U. S. 513, 526 (1958):

> Where the transcendent value of speech is involved, due process certainly requires in the circumstances of this case that the state bear the burden of persuasion • • •.

Cf. Tot v. *United States*, 319 U. S. 463, 469 [1943]; *Staub* v. *Baxley*, 355 U. S. 313, 318-319 [1958].

The same considerations which justify reversal of the presumption of constitutionality when limitations are placed on free speech apply with equal force when the sub-

stantial claim is that the right of franchise has been impaired by state action. The Court long ago stated in *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 (1886) that the political franchise "is regarded as a fundamental political right, because preservative of all rights." As in the case of free speech, this is an area in which restraint operates to impair operation of the political process which would otherwise be available for correction of abuses. It is accordingly proper that, where a substantial showing is made of severe population disparities among election districts, the presumption should be overcome and the state should have the burden of justification. Here, as in the case of another "highly sensitive constitutional area," only a "compelling state interest" can justify substantial infringement of the basic constitutional right to vote. *Sherbert* v. *Verner*, 374 U. S. 398 (1963).

State and federal courts which have considered the issue in the context of apportionment have almost invariably concluded that the presumption may be overcome by a showing of substantial inequality. *Moss* v. *Burkhart*, 207 F. Supp. 885, 891 (W. D. Okla. 1962); *Lisco* v. *McNichols*, 208 F. Supp. 471, 477-78 (D. Colo. 1962); *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962); *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va. 1962); *Sincock* v. *Duffy*, 215 F. Supp. 169, 189 (D. Del. 1963); *Davis* v. *Synhorst*, 217 F. Supp. 492, 497 (S. D. Iowa 1963); *Scholle* v. *Hare*, 367 Mich. 176, 187, 116 N. W. 2d 350, 355 (1962). The only significant case which at first appears contrary is the New York case, No. 20, in which the three-judge district court recognized the presumption "and the principle that a violation must be clear before a federal court of equity will lend its power to the disruption of the state

election processes * * *." *WMCA, Inc.* v. *Simon*, 208 F. Supp. 368, 373 (S. D. N. Y. 1962). But even there the court did not deny that the presumption could be overcome by a clear showing of inequality. *Cf. Sobel* v. *Adams*, 208 F. Supp. 316, 324 (S. D. Fla. 1962); *Thigpen* v. *Meyers*, 211 F. Supp. 826, 830 (W. D. Wash. 1962) (a population ratio of 1.5 to 1 from the largest to the smallest congressional district held not per se discriminatory, although the state legislative apportionment was upset in the same case on a showing of greater disparity); *Caesar* v. *Williams*, 371 P. 2d 241 (Ida. 1962).

Once substantial disparity has been demonstrated with respect to one or both houses of a state legislature, defendants must then "adduce evidence of the presence of other factors which might explain this disproportion * * *." *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va. 1962). Thereafter, "If defendants are able to show a rational basis for the classifications made, such showing will refute plaintiffs' prima facie case." *Davis* v. *Synhorst*, 217 F. Supp. 492, 497 (S. D. Iowa 1963). The ultimate issue, then, requires evaluation of the various defenses urged by state officials in justification of the alleged rationality of their unequal apportionment plans.

III

THE JUSTIFICATIONS ADVANCED BY STATE OFFICIALS FOR THE APPORTIONMENT PLANS CHALLENGED IN THESE CASES ARE INSUFFICIENT TO OVERCOME THE SHOWING OF GROSS INEQUALITY DEMONSTRATED IN EACH OF THE CASES BEFORE THE COURT.

A. Area

The claim that special weight should be given to geography is self-refuting. Pastures, rivers and trees do not vote and do not deserve representation in state legislatures. Government does not exist for their benefit. No one suggests that legislators should be chosen from uninhabited areas.

Yet, it is scarcely more logical to weight acreage in determining voter representation, although this has been attempted in the recently adopted Michigan constitution, where one voter and nineteen acres are valued as equals. 1962 Mich. Const., art. IV, sec. 2. There is not in any of the cases now before the Court such a bald attribution of weighting to area as in Michigan; but in each of the cases the effect of the existing provisions is to favor land masses directly or indirectly, necessarily at the expense of the right of franchise of individual voters.*

In truth, the argument is not precisely that area as such is entitled to special weighting in the fixing of election districts. The contention is rather that rural

* In the New York case, for example, Judge Levet frankly acknowledged his approval of geographical weighting at the expense of full representation of a clear majority of voters in the state. He said:

> The six counties in which plaintiffs reside contain 56.2% of the citizen population of the State, but those counties comprise only 3.1% of the area of the state. (208 F. Supp. 368, 379. See also Ryan, J., concurring, *id.* at 385.)

interests should be represented out of proportion to their number because rural voters are scattered over substantial areas as contrasted with the concentration of voters in the cities. Justification is apparently based on a claim that it is more difficult to campaign in rural than in urban areas because of the differently concentrated voter constituencies, and that it is accordingly permissible to reduce the proportionate value of the city dweller's right of franchise.

We doubt that the assumptions on which this attempted justification is based can be proved in this electronic age.* But in any case, they do not justify the drastic remedy of impairing the voting rights of millions of urban and suburban citizens. That would be to deal with one evil by creating a far greater one—one that runs counter to the basic constitutional guarantees of equality.

Preference for rural voters is sometimes sought to be justified on the ground that counties with "concentrated masses • • • have practical opportunities for exerting their political weight at the polls not available" to "thinly populated counties • • •" *MacDougall* v. *Green*, 335 U. S. 281, 284 (1948). We submit that there are no such "opportunities." Indeed, that is the very point of all these cases: The complainants from the more populous counties allege that they are denied even *equal* "opportunities for exerting their political weight at the polls • • •."**

* It can equally be argued that representatives of rural areas enjoy advantages because of the lower cost of newspaper, radio and television coverage and the greater homogeneity of their constituencies.

** It need hardly be added that the holding in the *MacDougall* case is not controlling or even persuasive here. To say, as the Court did in that case, that the state is not obligated to allow every aspiring political party to participate in elections is very different from saying that it has no obligation to treat all voters equally.

B. History

The appeal to history in justification for inequalities of voter representation cannot withstand analysis under the challenge of the equal protection clause of the fourteenth amendment, which must be read in the present tense. If a given apportionment plan produces gross inequality, it cannot be saved by showing either that the inequality has existed or that it developed gradually over a long period of time. Institutions are justified by history only if it shows that they have worked well. Moreover, as we have seen, departures from equality of representation can be justified, if at all, only by the need to serve compelling public objectives. Preservation of long-continued practice is not such an objective.

The instant cases reveal that the historical argument is little more than an effort to justify inequality solely on the ground that it has existed for a long time. As in *Baker* v. *Carr, supra,* the history in each state illumines rather than justifies the evil.

The Alabama constitution requires that the senatorial districts "shall be as nearly equal to each other in the number of inhabitants as may be * * *" (Ala. Const. art. 8, §200), and states that "The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them * * *" (*id.*, §198). In addition, article 18, section 284 contains the general mandate that "Representation in the legislature shall be based upon population * * *." See comment, *Alabama's Unrepresentative Legislature,* 14 Ala. L. Rev. 403 (1962). Even though other provisions of the state constitution made impossible the achievement of absolute equality, it is clear that the present situation is due to the fact that the legis-

lature has not even attempted to achieve equality and that, as in Tennessee, it failed to comply with its decennial obligation of reapportionment between 1901 and the abortive recasting of election districts in 1962. See *Sims* v. *Frink*, 208 F. Supp. 431, 433-35 (M. D. Ala. 1962); *Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950*, 254 Ala. 185, 187, 47 So. 2d 714, 717 (1950); *Opinion of the Justices of the Supreme Court of Alabama, No. 148, July 11, 1955*, 263 Ala. 153, 164, 81 So. 2d 881, 887 (1955).

The situation in Virginia is not different. In *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va. 1962), the three-judge court reviewed the state constitutional provisions relating to apportionment and concluded that "there is little doubt that in Virginia population is the overriding consideration in any distribution of representatives." In view of the fact that population was the "predominant," if not the "sole," factor which had historically controlled the fixing of Virginia election districts, it can scarcely be argued that history supports the gross inequalities which prevailed in Virginia when the present suit was instituted.

In the New York case, the three-judge court's conclusion that the apportionment provisions "are of substantially historical origin" (*WMCA, Inc.* v. *Simon*, 208 F. Supp. 368, 380 [S. D. N. Y. 1962]), is at least misleading. Indeed, if the reference to "historical origin" related to the three New York constitutions preceding the now-controlling constitution of 1894, the statement is simply inaccurate.* The 1894 Constitution, as we have seen, was

* See Appendix B of Brief for the Appellants in *WMCA, Inc.* v. *Simon*, No. 20, for a showing that before 1894 the relevant provisions permitted, and indeed required, much greater equality of citizen population among election districts than has been true at any subsequent time.

frankly designed to discriminate against urban areas (*supra*, p. 24n). Moreover, under the formula adopted at that time, the disparities in voter representation between the least populous and the most populous counties worsened with each successive apportionment. No. 20, Pls. Exhs. 1-5; R. 159, 243-47. Such a history cannot be used to justify inequality of voting rights.

The historical argument is most strongly pressed in the Maryland case because earlier versions of the Maryland plan may have served in part as a model for the composition of Congress and for the federal electoral college. *Maryland Comm. for Fair Representation* v. *Tawes*, 229 Md. 406, 412-14, 184 A. 2d 715, 718-19 (1962). But it is significant that the most important features of the Maryland system which may have been copied in the national government have now disappeared from Maryland election practice. The indirect election of state legislators was abandoned in 1837. Radoff, *The Old Line State* 64 (1956). And the unit system previously employed in statewide primary elections was held invalid by a three-judge federal court shortly after the parallel system in Georgia was ruled unconstitutional in *Gray* v. *Sanders*, 372 U. S. 368 (1963). *Maryland Comm. for Fair Representation* v. *Tawes*, —— F. Supp. —— (D. Md., May 10, 1963). As the Court stated in *Gray* v. *Sanders*, 372 U. S. at 378, "the analogies to the electoral college, to districting and redistricting, and to other phases of the problems of representation in state or federal legislatures or conventions are inapposite."

It has been suggested above that history is essentially irrelevant in determining present violation of one of the "basic civil rights of man" when tested against the equal

protection concept. But in truth, if history were to be invoked at all, the equal-population principle should carry the day. However great may have been the inequalities in the districts which made up the colonial assemblies, "when the colonies declared themselves states and proceeded to elect legislatures to draft their own constitutions, not a few rectified the imbalances that had existed prior to independence." Hacker, *Congressional Districting* 5 (1963). The Northwest Ordinance of 1787 was specific in its command:

> The inhabitants of the said territory shall always be entitled to the benefits * * * of a proportional representation of the people in the Legislature. (Art. II, §14.)

In the half century following the ratification of the Constitution,

> the tendency toward thoroughgoing political equality was increasingly accentuated * * *. Americans came to believe that they were all political equals, and they were prepared to act on that belief. The idea that one man, no matter what his origins or attainments, is as good as another became ingrained in the national character. (Hacker, *supra*, at 14-15.)

Departures from this salutary principle did not become widespread until the latter part of the nineteenth century. Although the original constitutions of 36 states required that representation be based completely, or almost so, on population, subsequently "this pattern was to change because of the growth of big cities." Advisory Comm. on Intergovernmental Relations, Apportionment of State Legislature 11 (1962). The further distortions of

the twentieth century are notorious, further aggravated by the sharp acceleration of the population shift, first to the cities and then to the suburbs, and the frequent legislative failure to act in compliance with state constitutional commands for reapportionment. No theory of constitutional law justifies using this recent history to sanction ever widening departures from the principle of equality.

C. *The Federal Analogy*

A variant of the historical argument is the claim that population can be altogether disregarded in one, if not both, houses of a bicameral legislature because that is the pattern adopted in the federal Congress. In the cases now before the Court this is not a threshold question because in none of them does even one house of the legislature satisfy the requirement of equality of election districts, which is the unstated but essential premise of an analogy drawn to Congress in which seats in the House of Representatives are apportioned on the basis of approximate equality of population.*

The federal analogy is nonetheless implicitly at issue in all the cases before the Court, including the Maryland case, because of the frequently heard argument that the fourteenth amendment is satisfied by application of the equal-population principle to one house. There is already a strong consensus in the state and lower federal courts

* The Maryland court of appeals apparently regarded the test as satisfied after partial reapportionment of the lower house by the legislature in 1962. But this can scarcely be the case where the 76 percent of the voters from the most populous area are still represented by only 55 percent of the members of the house of delegates and where the ratio of voter representation between the least populous and the most populous counties is a startling 32 to one.

that population must be the primary consideration in *at least* one house.*

In view of this almost total unanimity, we here focus our attention on the question whether the second house must also meet the same test. We submit that the federal analogy should be rejected, and equal representation be required in both houses, for several independent reasons.

1. The Constitution itself rejects the relevance of analogies drawn to the method of selection of members of the two houses of Congress. The allotment of two senators to each state is made not by legislative act but by an express constitutional provision which was the result of a necessary political compromise. That provision makes the organization of the Senate a special exception to the com-

* *Sims* v. *Frink*, 208 F. Supp. 431, 438 (M. D. Ala. 1962) (both houses); *Lisco* v. *McNichols*, 208 F. Supp. 471 (D. Colo. 1962), *id.*, ——— F. Supp. ——— (D. Colo., July 16, 1963); *Sincock* v. *Duffy*, 215 F. Supp. 169, 188 (D. Del. 1963) (both houses); *Sobel* v. *Adams*, 208 F. Supp. 316 (S. D. Fla. 1962); *Toombs* v. *Fortson*, 205 F. Supp. 248, 257 (N. D. Ga. 1962); *Davis* v. *Synhorst*, 217 F. Supp. 492, 499 (S. D. Iowa 1963); *League of Municipalities* v. *Marsh*, 209 F. Supp. 189 (D. Neb. 1962) (unicameral); *Nolan* v. *DiSalle*, ——— F. Supp. ——— (S. D. Ohio, June 12, 1963); *Moss* v. *Burkhart*, 207 F. Supp. 885 (W. D. Okla. 1962), *id.*, ——— F. Supp. ——— (W. D. Okla., July 17, 1963) (both houses); *Baker* v. *Carr*, 206 F. Supp. 341, 349 (M. D. Tenn. 1962); *Mann* v. *Davis*, 213 F. Supp. 577, 584-85 (E. D. Va. 1962) (both houses); *Wisconsin* v. *Zimmerman*, 209 F. Supp. 183 (W. D. Wis. 1962); *Caesar* v. *Williams*, 371 P. 2d 241 (Ida. 1962); *Maryland Comm. for Fair Representation* v. *Tawes*, 184 A. 2d 715, 718-21 (Md. 1962); *Scholle* v. *Hare*, 367 Mich. 176, 116 N. W. 2d 350 (1962) (both houses); *Jackman* v. *Bodine*, 188 A. 2d 642, 651 (N. J. Ch. 1962); *Sweeney* v. *Notte*, 183 A. 2d 296 (R. I. 1962); *Mikell* v. *Rousseau*, 183 A. 2d 817 (Vt. 1962). Apparently the only court which has not conceded that population must control in at least one house is the three-judge court in the New York case, in which the court regarded population as only one factor to be taken into account, along with "area, accessibility and character of interest." *WMCA, Inc.* v. *Simon*, 208 F. Supp. 368, 376 (S. D. N. Y. 1962).

mand of equality—a command made applicable to the states by the fourteenth amendment. The senate analogy cannot be used to carve an exception out of the clear command of the equal protection clause.

Reliance on history as a basis for the analogy is not sound. The dominant spirit at the Constitutional Convention in 1787, particularly as revealed in the Virginia Plan, favored proportionate representation in both houses of Congress. The egalitarian ideal of fairness in political representation had already been emphasized in the Declaration of Independence. As Thomas Jefferson later said, looking back to this earlier period: "Equal representation is so fundamental a principle in a true republic that no prejudice can justify its violation because the prejudices themselves cannot be justified." Letter to William King, Nov. 19, 1819, Jefferson Papers, Lib. of Cong., vol. 216, p. 38616.

In the eighteenth century, when broad limitations upon exercise of the franchise were still widely accepted, it is interesting that the principle of full equality should almost have succeeded in the provisions for election of members to both houses of Congress and that it was thereafter widely adopted as applicable to both houses of state legislatures. That the equal-population principle succeeded in only one house of Congress was simply a matter of practical politics. In order to secure the necessary agreement of sovereign states for the formation of a consensual union, a compromise of principle was made, which was not even then regarded as controlling in the formation of state legislatures.

2. The truth is that reliance on the federal analogy seems to be principally an after-the-fact rationalization in support of a variety of legislative apportionment schemes, many of which have very little in common with the congressional plan of representation. Only seven states, Arizona, Idaho, Montana, Nevada, New Jersey, New Mexico, and South Carolina, apportion their senates strictly according to state political units, while Vermont apportions its house by towns. Report of the Advisory Comm. on Intergovernmental Relations, *Apportionment of State Legislatures*, 14 n. 55 (1962). Not even Maryland, as to which the federal analogy has been specifically made an issue, qualifies. Although each county is entitled to one senator, the City of Baltimore is divided into six election districts which are not political units of the state for any other governmental purpose.

It is apparent that the permissibility of existing legislative apportionments should not depend on any real or imagined similarity to the congressional plan, but upon their intrinsic rationality or lack thereof in terms of the existing state election systems, when tested against the equal protection clause. That clause must be read in the light of contemporary experience, rather than with an over-the-shoulder glance at a different practice by a different sovereign whose action is required by the Constitution.

3. Counties and towns, unlike states, have no sovereign existence apart from the state which created them and which could at any time alter their boundaries or terminate their existence. The national government was founded by the states and was thus their creature, but the relation-

ship between the states and their political subdivisions is exactly opposite. States are guaranteed against dismemberment without their consent (U. S. Const., art. IV, sec. 3) and the tenth amendment guarantees to the several states all powers not delegated to the federal government or specifically forbidden in the Constitution. No such provisions protect towns or counties from the plenary powers of the states over their existence, functioning, and representation in the legislature.

In *Hunter* v. *City of Pittsburgh*, 207 U. S. 161, 178 (1907), the Court described the right of the state to alter local governmental lines: "The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state." See also *Sims* v. *Frink*, 208 F. Supp. 431, 438 (M. D. Ala. 1962); *Sincock* v. *Duffy*, 215 F. Supp. 169, 186 (D. Del. 1963); *Mann* v. *Davis*, 213 F. Supp. 577, 584-85 (E. D. Va. 1962). Today an exception should be read into that categorical statement. A rearrangement on grounds of race or color is forbidden by the fifteenth amendment. *Gomillion* v. *Lightfoot*, 364 U. S. 339 (1960). Similarly, a tampering with political lines in order to discriminate on grounds of religion or ethnic origin would surely be forbidden by the equal protection clause. It is not a very long step from that proposition to the principle that no apportionment may be accomplished which has the effect of diluting the vote of any group of the citizenry.

4. It is argued that accommodation to full equality of voter representation in both houses of a state legislature would destroy the purpose of the bicameral legislative

body. But this is largely based upon an appeal to what is constitutionally irrelevant and factually erroneous. There is nothing inherently sacred in the bicameral concept.*

It is not, however, necessary to reject the strong American tradition in favor of bicameralism. Even when full equality of election districts is achieved in both houses of a state legislature, each house can continue to serve a separate and distinct function.** In nearly every state, the terms of office are different in the two houses so that members of one house seek renewal of their elective mandate more frequently than in the other. Moreover, the constituencies are ordinarily different. In a typical situation, each member of the upper house has two to four times as many constituents in his district as does his lower house colleague. As a result the member of the lower house ordinarily has a more homogeneous constituency whose views he can represent with parochial narrowness while his counterpart in the other chamber must necessarily accommodate himself to a greater variety of views.

5. The most important reason of all for rejecting the federal analogy derives directly from the democratic principle. There is no justification for allowing any minority interest group, whether rural voters or any other, to gain

* Nebraska has long had a unicameral legislative body, and political scientists contend that in any event the unicameral legislature is more effective than the bicameral. National Municipal League, *Model State Constitution* 42-44 (6th ed. 1963). See also *Mann* v. *Davis*, 213 F. Supp. 577, 584-85 (E. D. Va. 1962).

** The argument that it is pointless to have two legislative chambers both elected on a representational basis apparently did not impress the many states whose original constitutions called for just that arrangement (*supra*, p. 39).

absolute control of a state legislature with concomitant power to enact legislation which is unacceptable to the majority. It is one thing to preserve restraint upon majority action through the power of executive veto, by special majorities for change of organic law, by bills of rights, and otherwise. But it is quite another matter, and utterly indenfensible, to place in the hands of a minority the power to enact positive legislation along with the power to prevent diminution of its own dominant role in the legislative process.

D. Availability of the Initiative

It is sometimes suggested that malapportionment is justifiable, or at least not irrational in its discrimination, where "the ultimate constituent power [is] allowed an adequate opportunity to express itself." McCloskey, *The Reapportionment Case*, 76 Harv. L. Rev. 54, 71 (1962). The argument seems to be that, in the approximately twenty states which have the initiative (Baker, *State Constitutions: Reapportionment* 47 [National Municipal League Pamphlet 1960]), the equal protection clause imposes no restraint because of the presumed power in the voters to take corrective action by resort to the initiative or its equivalent. If that doctrine should prevail, we might then expect states which do not now have the initiative "to accept the implicit invitation to bypass the *Baker* ruling by adopting such devices." Sindler, *Baker* v. *Carr: How to "Sear the Conscience" of Legislators*, 72 Yale L. J. 23, 32 (1962). For the hard fact is that the initiative has proved unwieldy in operation, costly for those who seek to avail themselves of the technique, and uncertain

as a means of testing actual voter sentiment on the questions sought to be posed.*

However, there is a more fundamental answer to this argument. No one would suggest that segregation could be reimposed by the "will of the people" manifested through state constitutional amendments adopted pursuant to initiative procedures. Equally, religious discrimination could not be imposed by initiative. The right of franchise should be similarly protected from diminution even by a presumably clear expression of the popular will. "The inalienable constitutional right of equal protection cannot be made to depend upon the will of the majority." *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962). See also Note, *Baker* v. *Carr and Legislative Apportionments: a Problem of Standards*, 72 Yale L. J. 968, 984-88 (1963).

Although the initiative is not available as such in any of the states whose cases are now before the Court, a variant of the initiative argument is at least faintly urged in the New York case. The New York constitution provides for a referendum every twenty years on the question of whether to call a constitutional convention. In 1957 the voters rejected such a call, but there is no reason to believe that this was in any way a ratification of existing malapportionment. See Brief of Appellee, Paul R. Scre-

* In holding that the availability of the initiative is not an adequate remedy for existing malapportionment, the three-judge court in *League of Nebraska Municipalities* v. *March*, 209 F. Supp. 189, 193 (D. Neb. 1962), noted the impracticality of resort to this device by an individual voter and concluded that "In addition, the expense of putting an initiated proposal on the ballot in Nebraska is prohibitive for the ordinary voter." See also *Toombs* v. *Fortson*, 205 F. Supp. 248, 256 (N. D. Ga. 1962); *Davis* v. *Synhorst*, 217 F. Supp. 492, 500 (S. D. Iowa 1963); *Moss* v. *Burkhart*, ——— F. Supp. ——— (W. D. Okla. July 17, 1963); *Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962).

vane in support of Appellants in No. 20, at pages 78-90. See also *Scholle* v. *Hare*, 367 Mich. 176, 116 N. W. 2d 350 (1962). Even if the 1957 vote could be read to approve the existing formula, there is no basis for requiring the electorate to wait until 1977 for another chance at the same question. Then, as before, voters might well hesitate to ask reconsideration of the apportionment formula in a body constituted by the already malapportioned legislature in a manner which would discriminate against the same class of voters disadvantaged by the present formula.

E. Governmental Boundaries

The only argument which has any merit as a possible supplement to—but not substitute for—the equal-population principle is the proposition that in drawing election district lines some respect should be accorded to existing governmental boundaries. Two arguments can be advanced in support of this proposition.

In the first place, in some states, counties and other local governmental units continue to exercise some, although ever-decreasing, governmental functions, and thus may deserve a hearing in state legislative chambers through legislators who will have those interests in mind. This is not to say that each such unit deserves separate representation in both houses, or even in one house, but simply that it may be desirable to preserve governmental lines wherever that can be done without compromise of the equal-population principle.

Of the cases now before the Court the argument is most explicitly made in the Maryland case where the state court observed that the counties "have traditionally exercised wide governmental powers * * *." *Maryland Comm.*

for Fair Representation v. *Tawes*, 229 Md. 406, 412, 184 A. 2d 715, 718 (1962). See also *Sobel* v. *Adams*, 208 F. Supp. 316, 321-22 (S. D. Fla. 1962); *Davis* v. *Synhorst*, 217 F. Supp. 492, 499 (S. D. Iowa 1963); *Baker* v. *Carr*, 206 F. Supp. 341, 346 (M. D. Tenn. 1962); *Jackman* v. *Bodine*, 188 A. 2d 642, 648-49 (N. J. Ch. 1962). The typical pattern, however, has been toward a decline in the functions of government committed to the counties, as the court observed in *Sincock* v. *Duffy*, 215 F. Supp. 169, 186 (D. Del. 1963).

In the second place, a requirement of observance of existing boundaries to the extent possible can be helpful in preventing the harm of gerrymandering. Experience shows that respect for existing boundary lines will not absolutely prevent gerrymandering but can at least make it more difficult of accomplishment.

The fact that the observance of the boundaries of existing governmental units has certain advantages does not, however, mean that it can be used to justify disregard of the principle of equality. Yet that is precisely what is done when counties are given equal representation, or a maximum number of representatives, regardless of size. We submit that apportionment provisions that look toward rigid prescription of boundary lines must be held to be constitutionally objectionable to the extent that they result in appreciable departure from equality.

We believe that it is decisive of the constitutional question in these cases that no showing has been made that existing governmental boundaries cannot be observed under an apportionment scheme that achieves substantial equality of voter representation. In each of the affected states, there is gross malapportionment that plainly does violence to the requirement of equality. The defendant

state officials have failed to show that their unequal systems are necessary to the achievement of essential governmental objectives. Unless they do so, the existing inequities must be held to be unconstitutional.

The question may finally be asked: How much deviation is too much? No one suggests that exact mathematical equality is required. See, *e.g.*, *Sims* v. *Frink*, 208 F. Supp. 431, 439 (M. D. Ala. 1962); *Lisco* v. *McNichols*, 208 F. Supp. 471, 476 (D. Colo. 1962); *WMCA, Inc.* v. *Simon*, 208 F. Supp. 368, 376 (S. D. N. Y. 1962); *Moss* v. *Burkhart*, —— F. Supp. —— (W.D. Okla. July 17, 1963); *Baker* v. *Carr*, 206 F. Supp. 341, 345 (M. D. Tenn. 1962); *Mikell* v. *Rousseau*, 183 A. 2d 817, 821-23 (Vt. 1962); *Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va. 1962); *Thigpen* v. *Meyers*, 211 F. Supp. 826, 831 (W. D. Wash. 1962). But the gross disparities and egregious malapportionments demonstrated in each of the cases now before the Court offer no such problems of refined choice. These are not twilight cases, but more nearly instances of noon and midnight.

Some courts have suggested that disparities in excess of two to one are invalid, and that those in the narrower range may still be suspect. See *Scholle* v. *Hare*, 367 Mich. 176, 188-89, 116 N. W. 2d 350, 355 (1962); Goldberg, *The Statistics of Malapportionment*, 72 Yale L. J. 90, 93 (1962). The doubtful validity of even a two-to-one ratio was recognized by the court in *Sincock* v. *Duffy*, 215 F. Supp. 169, 190 (D. Del. 1963): "A ratio of two to one is one of 100% and we can perceive no sound basis for such a broad ratio in this State." See also *McDougall* v. *Green*, 355 U. S. 281, 288 (Douglas, Black and Murphy, JJ., dissenting) (1948). There appears to be no reason in mathematics, history, analogy, or existing political structure to justify *any* sig-

nificant deviation from the equal-population principle in either house of the state legislature in any of the cases now before the Court.

We conclude, with the majority of the Advisory Commission on Intergovernmental Relations, in its December 1962 Report on Apportionment of State Legislatures (p. 67), that "'Equal protection of the laws' would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature, be based strictly on population."

It remains only for this Court to state unequivocally the primacy of the equal-population principle, leaving implementation to state legislatures. Ordinarily, no more drastic remedy will be necessary than a clear statement as to the requirements of equal protection in the context of apportionment and districting, while directing the appropriate lower federal courts and state courts to retain jurisdiction pending prompt and complete legislative correction. The sanction of more drastic judicial action should thus become unnecessary, although its availability should be clearly indicated in the event of necessity.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THE *AMICI* URGE THE INVALIDATION OF THE APPORTIONMENT PLANS IN EACH OF THE CASES NOW BEFORE THE COURT FROM ALABAMA, MARYLAND, NEW YORK, AND VIRGINIA, AND THE ENUNCIATION OF A REQUIREMENT OF EQUALITY OF VOTER REPRESENTATION IN ACCORDANCE WITH THE REQUIREMENTS OF THE EQUAL PROTECTION OF THE LAWS CLAUSE OF THE FOURTEENTH AMENDMENT.

Respectfully submitted,

LEO PFEFFER,
Attorney for American Jewish Congress,
15 East 84th Street,
New York 28, New York,

MELVIN L. WULF,
Attorney for American Civil Liberties Union,
156 Fifth Avenue,
New York 10, New York,

JACK GREENBERG,
Attorney for N. A. A. C. P. Legal Defense and Educational Fund, Inc.,
10 Columbus Circle,
New York 19, New York,

ROBERT B. McKAY,
Of Counsel.

Amici Curiae.

September 1963

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 16 1963
JOHN F. DAVIS, CLERK

No. 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

WMCA, INC., R. PETER STRAUS, JOSEPH DE MAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Appellants,

against

CAROLINE K. SIMON, Secretary of State of the State of New York; LOUIS J. LEFKOWITZ, Attorney General of the State of New York; PAUL R. SCREVANE, President of the City Council of the City of New York; EUGENE H. NICKERSON, County Executive, Nassau County; LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County; ARTHUR CROMARTY, Chairman, Board of Supervisors, Suffolk County; DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PAUL R. SCREVANE, et al., APPELLEES, IN SUPPORT OF APPELLANTS

LEO A. LARKIN
Corporation Counsel of the City of New York
Municipal Building,
New York 7, N. Y.
Attorney for Paul R. Screvane, et al., Appellees

GEORGE H. P. DWIGHT
BENJAMIN OFFNER
of Counsel

32 CASE PRESS INC., 421 Hudson St., N. Y.—ORegon 5-4540

INDEX

	PAGE
SUMMARY OF ARGUMENT	2
STATEMENT	5
I. The Impairment of Votes in Voting for the New York Legislature and Its Results	6
A. The Vote Conferred by the Franchise Has Been Impaired	6
The 1953 Legislative Apportionment Based on the 1950 Federal Census	9
The Pending Legislative Apportionment Based on the 1960 Federal Census	10
The Continuing 1953 Legislative Apportionment, in Light of the 1960 Federal Census	11
B. The Impairment of Votes in Voting for the Legislature Has Produced Harmful Results	13
1. Domination of the legislature by a minority of the population has handicapped responsible state and local government	13
2. Domination of the legislature by a minority of the population has resulted in harmful one-party control	15
II. The New York Method of Legislative Apportionment and How It Impairs Votes	17
A. Apportionment of the Senate	20
1. Apportionment of senators to a county having 6% or more of the state's population	21
2. The "full-ratio" rule	22

PAGE

3. The rule requiring an increase in the number of senators 24

4. Apportionment of the remaining senators 27

5. Miscellaneous other rules 30

B. Apportionment of the Assembly 32

ARGUMENT:

I. The New York method of legislative apportionment results in an arbitrary impairment of votes by means of invidiously discriminatory geographic classification 38

A. The New York Method of Legislative Apportionment Results in Invidious Discrimination Against the Voting Power of Particular Classes of People by Means of Geographic Classification 39

1. The New York method of legislative apportionment results in a substantial impairment of votes in each house of the legislature 39

2. The New York method of legislative apportionment discriminates intentionally against particular classes of people by impairing their votes 41

3. Appellants have proved "invidious discrimination" against the class of people whose votes are impaired in each house of the legislature 43

4. No defense of justification is available to the State 45

(a) The New York method of legislative apportionment is a *per se* violation of the Fourteenth Amendment 46

PAGE.

(b) Any apportionment of the New York legislature must be consistent with the principle of equality of voting power 47

5. The protection for the interests of the people of the less-populated counties is otherwise adequate 49

B. The New York Method of Legislative Apportionment Results in an Arbitrary Impairment of Votes 52

1. The 1894 method of legislative apportionment is obsolete 52

2. The New York method of legislative apportionment produces arbitrary and irrational variations between representation and population 57

In the Assembly:

(a) Counties of equivalent populations with different representation 57

(b) The rule prohibiting an assembly district which crosses a senate district boundary 58

(c) The inconsistent combination of Fulton and Hamilton counties into one assembly district 60

In the Senate:

(a) Variation in representation among urban counties 62

(b) Increasing the representation of the less populated counties as the more populated counties increase in population 66

(c) The random impact of the "full-ratio" rule 70

PAGE

II. The majority has no practical opportunity to change the New York method of legislative apportionment 73

CONCLUSION 85

APPENDIX A

Full text of N. Y. CONST. Art. I, §1, and Art. II, §1 86

APPENDIX B

"Total Representation" in New York State by Counties in Pending Apportionment Based on 1960 Census 88

APPENDIX C

Facsimile of Face of Voting Machine Used in Part of New York County in the General Election on November 5, 1957 90

CITATIONS

Cases:

Ashby v. White, 2 Ld. Ray. 938, 92 Eng. Rep. 126 (House of Lords 1703) 44

Baker v. Carr, 369 U. S. 186 (1962) 14, 38, 43, 46, 52, 57, 73

Baker v. Carr, 206 F. Supp. 341 (M.D. Tenn. 1962) 46

Brown v. Board of Education, 347 U. S. 483 (1954) 43

Burns v. Flynn, 268 N. Y. 601 (1935) 18

Davis v. Synhorst, 217 F. Supp. 492 (S.D. Iowa 1963) 40, 78

Gomillion v. Lightfoot, 364 U. S. 339 (1960) 43

Gray v. Sanders, 372 U. S. 368 (1963) 47, 48, 49

Green v. Shumway, 39 N. Y. 418 (1868) 8

PAGE

Griffin v. Illinois, 351 U. S. 12 (1956) 44
Guinn v. United States, 238 U. S. 347 (1915) 68

Hunter v. Pittsburgh, 207 U. S. 161 (1907) 43

Johnson v. City of New York, 274 N. Y. 411 (1937) 7

Kotch v. Board of River Port Pilot Comm'rs, 330 U. S. 552 (1947) 44

Lane v. Wilson, 307 U. S. 268 (1939) 68
Lassiter v. Northhampton County Board of Elections, 360 U. S. 45 (1959) 7, 49
Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61 (1911) 44

MacDougall v. Green, 335 U. S. 281 (1948) 2, 47, 49
Matter of Crane v. Voorhis, 257 N. Y. 298 (1931) 8
Matter of Dowling, 219 N. Y. 44 (1916) 18, 26, 69
Matter of Fay, 291 N. Y. 198 (1943) 18, 26, 27, 28
Matter of Reynolds, 202 N. Y. 430 (1911) 18
Matter of Sherrill v. O'Brien, 188 N. Y. 185 (1907) 18, 30, 31, 36
McGowan v. Maryland, 366 U. S. 420 (1961) 44
Morey v. Doud, 354 U. S. 457 (1957) 44
Moss v. Burkhart, 207 F. Supp. 885 (W.D. Okla. 1962) 40

NAACP v. Button, 371 U. S. 415 (1963) 43
Neal v. Delaware, 103 U. S. 370 (1880) 45

People ex rel. Coffey v. Democratic Committee, 164 N. Y. 335 (1900) 8
Sherbert v. Verner, 374 U. S. 398 (1963) 43

Sincock v. Duffy, 215 F. Supp. 169 (D. Del. 1963); *appeal pending sub. nom. Roman v. Sincock*, No. 307, Oct. Term, 1963 ..... 14, 40, 46
Skinner v. Oklahoma, 316 U. S. 535 (1942) 43, 44
Snowden v. Hughes, 321 U. S. 1 (1944) 39
South v. Peters, 339 U. S. 276 (1950) 44

PAGE

Thigpen v. Meyers, 211 F. Supp. 826 (W.D. Wash. 1962), *appeal pending sub. nom. Meyers v. Thigpen*, No. 381, Oct. Term, 1963 78

Toombs v. *Fortson*, 205 F. Supp. 248 (N.D. Ga. 1962) 46

United States v. Carolene Products Co., 304 U. S. 144 (1938) 44

WMCA v. Simon, 370 U. S. 190 (1962) 2, 41, 42, 45

Williamson v. Lee Optical, 348 U. S. 483 (1955) .. 43

Yick Wo v. Hopkins, 118 U. S. 356 (1886) 44, 49

Statutes:

United States Constitution:

Art. II §1, par. 2 48

Fourteenth Amendment ..2, 4, 20, 38, 39, 45, 46, 69, 75

Equal Protection Clause 3, 43, 47, 48, 52

Fifteenth Amendment 6, 45

Nineteenth Amendment 7

New York Constitution:

Art. I §1 6

Art. II §1 6

Art. III:

§1 8

§§2-5 ..... 17, 41

§2 19

§3 18

§4 17

par. 1 .....17, 18, 19, 30, 33, 60, 61

par. 2 .....23, 42, 53

par. 3 .....19, 21, 25, 26

PAGE

§5 17
par. 1 ..... 7, 17, 19, 32, 34
par. 2 32
par. 4 ..... 17, 36, 39, 60, 61

Art. XIX:
§1 74
§2 ..... 75, 83
§3 75

N. Y. State Law §§110-12 (Cum. Supp. 1963) 16
N. Y. State Law §§121, 123 18
N. Y. Laws 1953, c. 893 18
N. Y. Laws 1943, c. 359 18
N. Y. Laws 1917, c. 798 18
N. Y. Laws 1912, c. 548 25
N. Y. Laws 1907, c. 727 18
N. Y. Laws 1898, c. 588 25
N. Y. Laws 1897, c. 378 53

Other Authorities:

Brief of Abe Stark, *et al.*, *WMCA* v. *Simon*, October Term, 1961, No. 836 2

Brief of Paul R. Screvane, *et al.*, *WMCA v. Simon*, October Term, 1962, No. 460 2

House Comm. on Government Operations, *Federal-State Local Relation: Federal Grants-in-Aid*, H. R. Rep. No. 2533, 85th Cong., 2d Sess. (1958) . 13

Jewell, the Politics of Reapportionment (1962) . 19

Key, Politics, Parties, and Pressure Groups (3d ed. 1952) 16, 51

1 Lincoln, Constitutional History of New York (1906) 7

PAGE

MAYOR ROBERT F. WAGNER, NINTH ANNUAL REPORT TO THE CITY COUNCIL AND TO THE PEOPLE OF NEW YORK CITY 14

Motion to Dismiss or Affirm, *WMCA v. Simon*, October Term, 1962, No. 460 41

N. Y. DEP'T STATE, GOVERNOR AND LIEUTENANT GOVERNOR—VOTE CAST ON NOVEMBER 6, 1962 (1963) 50

NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, AMENDMENTS PROPOSED TO NEW YORK CONSTITUTION 1895-1937 (1938) 17, 73

1 NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, NEW YORK STATE CONSTITUTION ANNOTATED (1938) 6, 7, 8

3 NEW YORK STATE CONSTITUTIONAL CONVENTION (1894), REVISED RECORD (1900) 33

N. Y. Legislative Bills, 1963 Session; S. Int. No. 763, 1136; Ass. Int. No. 1783, 2081 73

1962-63 N. Y. LEGIS. MAN. (1962) 54

1959 N. Y. LEGIS. MAN. (1959) 50

1958 N. Y. LEGIS. MAN. (1958) 77

1957 N. Y. LEGIS. MAN. (1957) 77

1956 N. Y. LEGIS. MAN. (1956) 50

NEW YORK STATE DEPARTMENT OF COMMERCE, RESEARCH BULLETIN NO. 3 (1962) 51

NEW YORK STATE DEPARTMENT OF CORRECTION, RELEASE (1963) 51

NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

Statistical Summary of Programs (1962) 51

Annual Report 1960-61 (1961) 51

PAGE

1958 N. Y. Sess. Laws 74

1957 N. Y. Sess. Laws 74

1956 N. Y. Sess. Laws 74

1955 N. Y. Sess. Laws 74

New York Times:

Sept. 8, 1963 16

1957:

Sept. 7 79

Sept. 19 82

Sept. 21 82

Sept. 24 79

Sept. 30 83

Oct. 1 83

Oct. 10 82

Oct. 13 82

Oct. 20 82

Oct. 28 83

Oct. 29 80

Oct. 31 83

Nov. 1 ..... 81, 82, 83

Preliminary Report to the Joint Legislative Committee on Reapportionment, N. Y. Legis. Doc. No. 31 (1950) 9, 74

Regional Plan Association, Bulletin 100, Spread City (1962) 56

Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581 (1962) 20

Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1 (1962) 20

Truman, The Governmental Process (1951) 51

United States Commission on Intergovernmental Relations, Report to the President (1955) 13

PAGE

United States Department of Commerce, Bureau of the Census, United States Census of Population, 1960 New York Detailed Characteristics 51

Wells, Legislative Representation in New York State (1963 ed.) 15, 16, 20, 56

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

WMCA, INC., *et al.*,

Appellants,

-v-

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF PAUL R. SCREVANE, et al., APPELLEES, IN SUPPORT OF APPELLANTS

This brief is submitted by appellee Paul R. Screvane, as President of the City Council of the City of New York, and appellees Denis J. Mahon, James Power, John R. Crews and Thomas Mallee, as Commissioners of the Board of Elections of the City of New York, in support of appellants' claims. The position of these appellees is that of the City of New York and for convenience they are collectively called the City of New York or the City.

The City of New York answered, admitting the allegations of the complaint and joining in plaintiffs' prayer for relief (R. 87-88). In the prior appeal to this Court it submitted a brief in support of appellants' jurisdictional state

ment. See Brief of Abe Stark, *et al.*, *WMCA* v. *Simon*, October Term, 1961, No. 836. At the hearing held by the court below on August 1, 1962, following this Court's vacatur of the prior judgment of dismissal (370 U. S. 190), the City supported appellants' claims and offered Hon. Abraham D. Beame, Comptroller of the City of New York, as a witness to prove certain allegations of the complaint (R. 132, 147).

The City also submitted a brief in support of appellants' jurisdictional statement on the instant appeal. See Brief of Paul R. Screvane, *et al.*, *WMCA* v. *Simon*, October Term, 1962, No. 460.*

The City will not repeat the introductory portions of appellants' brief. It endorses the matters therein set forth as a complete and accurate summary of the jurisdictional facts, the questions presented and the proceedings and opinions below.

Summary of Argument

1. Under the Fourteenth Amendment any apportionment of the New York State legislature must be consistent with the principle of equality of voting power. This principle has been recognized by the law of New York since enactment of the suffrage amendment to the state constitution in

---

* Precedent for the City's position may be found in *MacDougall* v. *Green*, 335 U. S. 281 (1948), where Governor Dwight H. Green of Illinois, a defendant in the action and appellee in this Court, argued in support of appellant's contention that the election statute there involved violated the Fourteenth Amendment. Governor Green's argument is outlined in the report of the case in 93 L. ed. 5-6.

1826. The state having adopted a system of government based on the consent of the governed, the Equal Protection Clause protects each individual in the state in the most important aspect of his vote, the right to have it count equally with the vote of each of his fellows. His protected right to choose those who are to exercise the powers of state government over him includes those who are to exercise the legislative power, the power to make laws affecting his life and property. His right to an equal vote for the legislature cannot be impaired by invidiously discriminatory geographic classification.

2. The New York method of legislative apportionment, contained since 1894 in the state constitution, effects by means of invidious discrimination the impairment of the votes of a large number of people in the state, in both houses of the legislature, the Senate and the Assembly, and on every legislative apportionment.

(a) Impairment of votes is produced by certain rules in the constitution, the effect of which is to create two classes of people in the state: those who live in the more populous counties, and those who live in the less populous counties. In each house the more populous counties as a class are apportioned representation in the legislature which is substantially less, in proportion to population, than the representation apportioned to the less populous counties. In this way the vote of a person who lives in one of the more populous counties is under-valued (impaired), and the vote of a person who lives in one of the less populous counties is over-valued.

(b) The geographic classification which impairs the votes of those who live in the more populous counties con-

stitutes an invidious discrimination, in that in both the Assembly and the Senate the discrimination thus effected is intentional, both systematic and long-continued.

3. Assuming *arguendo* that a state may show a reasonable basis for such an intentionally discriminatory impairment of votes, the state offered no proof in this case, and a reasonable basis was not otherwise established. Appellants established at least a *prima facie* case when they proved for each house a substantial impairment of votes, or, alternatively, an intentionally discriminatory impairment of votes by means of geographic classification. The absence of any showing of reasonable basis entitles appellants to the relief sought. Furthermore, as a minimum, the proper rule should be that appellants' proof establishes a *per se* violation of the Fourteenth Amendment, since it includes proof that as a result of discriminatory classification, a substantial majority of the people is reduced to minority representation in *both houses.*

4. Assuming *arguendo* that it is necessary to show arbitrary and irrational elements in an apportionment in order for it to violate the Fourteenth Amendment, such elements are present in New York's. It is utterly irrational to continue to apply a method of legislative apportionment devised in 1894, when today the inevitable result in every apportionment is a substantial impairment of the voting power of the majority in both houses of the legislature. And, among other irrationalities, both the Assembly and the Senate show "horizontal disparities" among counties of the same character, urban or rural.

5. Assuming *arguendo* the significance of a political remedy available to the majority to change the method

of legislative apportionment, no such remedy exists in New York. The only arguable avenue for change, the mandatory referendum on whether to hold a constitutional convention, voted on once every 20 years, is not a practical opportunity for the majority to act. No significance can properly be attached to the 1957 vote against holding a convention.

In short, this court is the last resort of a majority of the people of the State of New York to confirm their right, implicit in the grant of suffrage, to representation in the state legislature on a basis consistent with equality of voting power.

Statement

This section outlines the facts and figures on which the succeeding argument is based. The facts in a legislative apportionment problem necessarily include matters of law; however, we believe that the statements in this section will not be the subject of argument.

The section is divided into two parts: the first deals with the impairment of votes in New York—that is, the population figures compared to legislative representation—and certain of its consequences for state government. The other analyzes the rules involved in the complicated New York method of legislative apportionment and shows how certain of these rules operate to produce the impairment of votes.

By "impairment of votes" in a legislative apportionment we mean an apportionment of a representative in either house of the legislature to a geographic district such that the representative elected by the voters of the district

has a proportionate vote in that house of the legislature which is less than the proportion which the population of the district bears to the total population of the state.

I.

The Impairment of Votes in Voting for the New York Legislature and Its Results

A. The Vote Conferred by the Franchise Has Been Impaired

Since its first constitution in 1777, New York has recognized the franchise as one of the rights and privileges secured to a citizen, and the constitution has expressly provided that no person may be disenfranchised except by due process of law. See N. Y. Const. Art. I §1;* 1 New York State Constitutional Convention Committee, New York State Constitution Annotated 1-2 (1938).

By constitutional amendment adopted in 1826, the franchise was extended to every white male citizen of the age of 21 who satisfied a residence requirement.** The amendment entitled him to equal voting power. See New York State Constitutional Convention Committee, *op. cit. supra*, Part II, at 41. This constitutional provision has continued substantially unchanged to the present time, with only the additional qualification, since 1922, of ability to read and write English. See N. Y. Const. Art. II §1;* *cf.*

---

* For text of Article I §1 and Article II §1, see Appendix A.

** The constitution of 1821 broadened the franchise but continued in a modified form the previous property qualifications for voting. See Constitution of 1821 Art. II § 1, New York State Constitutional Convention Committee, *op. cit. supra*, Part II, at 28. The debate over suffrage at the constitutional convention of 1821 arose on a motion by Chief Justice Ambrose Spencer that the Senate should continue to be elected by freeholders (property owners). Chancellor James Kent spoke in favor of the motion, and made the following argument:

U. S. CONST. Ams. XV, XIX; *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959).

In the "settled conviction that the safeguarding of our institutions requires the untrammeled exercise of the fran-

---

"The growth of the city of New York is enough to startle and awaken those who are pursuing the *ignis fatuus* of universal suffrage. In 1773 it had 21,000 souls; in 1801 it had 60,000 souls; in 1806 it had 76,000 souls; in 1820 it had 123,000 souls.

"It is rapidly swelling into the unwieldy population, and with the burdensome pauperism, of a European metropolis. New York is destined to become the future London of America; and in less than a century, that city, with the operation of universal suffrage, and under skilful direction, will govern this state.

"The notion that every man that works a day on the road, or serves an idle hour in the militia, is entitled as of right to an equal participation in the whole power of the government, is most unreasonable, and has no foundation in justice. * * *"

The motion failed by a vote of 100 to 19, and five years later the suffrage amendment was adopted. See, generally, 1 LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 640-52 (1906) (Chancellor Kent's argument is quoted at pp. 646-47); *Johnson* v. *City of New York*, 274 N. Y. 411, 417-19 (1937).

Compare Chancellor Kent's argument with the similar arguments in favor of limiting New York City's representation in the legislature, as expressed during the 1894 constitutional convention. See Appellants' Brief, Appendix C. At the time of the 1821 constitutional convention and thereafter until the constitution of 1894, the legislature, both assembly and senate, was apportioned on the basis of population. See constitution of 1821, Art. I § 6 (senate) § 7 (assembly); constitution of 1846, Art. III § 4 (senate), § 5 (assembly), NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, *op. cit. supra*, Part II, at 25-26, 50-51. See Appellants' Brief, Appendix B.

Although the 1821 and the 1846 constitutions also guaranteed each county at least one assemblyman, in those times this was consistent with apportionment on the basis of population, because of the large size of the assembly (128 members) compared to the then population of the state, and the relatively even distribution of population throughout the state. See p. 56, *infra*. Then as now, both constitutions further provided: "no new county shall hereafter be erected, unless its population shall entitle it to a member." *Id.* at 26, 51; N. Y. CONST. Art. III § 5, par. 1.

chise by the citizens," *People ex rel. Coffey* v. *Democratic Committee*, 164 N. Y. 335, 338 (1900), the New York Court of Appeals adopted a strict construction of the constitutional protection for suffrage. No additional voting qualification can be imposed by the legislature. *Green* v. *Shumway*, 39 N. Y. 418 (1868) (dictum at 426: it would be "extraordinary" if the suffrage provision (Art. II §1) enabled the legislature "to disenfranchise any class of citizens"). A voter is disenfranchised if he is not afforded strict "equality of opportunity" in voting, *e.g.*, *Matter of Crane* v. *Voorhis*, 257 N. Y. 298 (1931).

Despite this grant of equal voting power, the right of a citizen of New York to vote has been substantially abridged through impairment of his vote for one branch of the state government, the legislature—if he happens to be one of the class of people who reside in the heavily-populated counties of the state. A voter in this penalized class has and must have a full and equal vote in a state-wide election for governor, but in choosing his representatives in the legislature New York State allows him only an impaired vote.

The legislative power of the State of New York has always been vested in a two-house legislature, composed of the Senate and the Assembly,* and impairment of votes occurs in both houses of the legislature. It becomes apparent by examining three sets of figures: the 1953 legislative apportionment and the 1950 federal census figures

* See N. Y. Const. Art. III § 1, a provision originally enacted as part of the third constitution of 1846. This provision was derived from substantially identical provisions in the second constitution of 1821 (Article I § 1), and the first constitution (Section II), adopted in 1777 and continued in effect until the second constitution was approved by the people in 1822. See New York State Constitutional Convention Committee, *op. cit. supra*, Part II, at 24, 8.

on which it was based; the pending legislative apportionment based on the 1960 federal census; and, finally, the transitory situation which now exists: the continuing 1953 legislative apportionment, in light of the 1960 federal census figures.

The 1953 Legislative Apportionment Based on the 1950 Federal Census

As a result of the 1953 legislative apportionment, based on the 1950 census, a minority of 38% of the population* of the state was able to elect a majority of the members of the Assembly and a minority of 41% was able to elect a majority of the Senate.**

The City of New York—comprising the five counties of Bronx, Kings (Brooklyn), New York (Manhattan), Queens and Richmond (Staten Island), by far the largest population center in the state—had 53% of the state's population in 1950 yet was apportioned only 43.3% of the assemblymen and 43.1% of the senators in the 1953 apportionment.

---

* See p. 17, footnote*, *infra*.

** The figures for percentage representation are determined by arithmetic, in these instances using the total population of the 76 least populous assembly districts and the 30 (in the 1953 apportionment) and 29 least populous senate districts, respectively. The population-per-county figures based on the 1950 and 1960 census, and the 1953 apportionment of the Senate and Assembly appear by stipulation of the parties at R. 226-28. The population-per-district figures for the pending apportionment appear by stipulation of the parties at R. 234 (senate districts partial) and R. 237-40 (assembly districts). The population-per-district figures for the senate apportionments of 1894, 1907, 1917 and 1943 appear in *Preliminary Report to the Joint Legislative Committee on Reapportionment*, N. Y. Legis. Doc. No. 31 (1950), Exhibits I, G, F and B, respectively. For ease of reading, specific citation for apportionment figures contained in the above sources, or interpolated from them, has been omitted in the text.

In the Assembly, the most populous district had a population of 167,226 (one district in Onondaga County; R. 236); the least populous was the district comprising Schuyler County (population: 14,066). Each resident of Schuyler County thus had almost twelve times the representation of a resident of the Onondaga district. New York City's 65 assemblymen represented an average population of 114,436. The 23 least populous counties, each with its own assemblyman, all had populations of less than 47,345—half the state-wide average population per district.

In the Senate the most populous districts were the four of Bronx County, averaging 344,545. The least populous district, the 39th, comprising Essex, Saratoga and Warren counties, had a total population of 146,666. The ratio between each of the four Bronx districts and the least populous district thus was 2.4 to 1. The four densely populated counties of New York City (Bronx, Kings, New York and Queens), were apportioned 24 senators; the average population per district for these counties was 302,221 against the state-wide average of 244,887 per district. At the same time, for example, the 15 upstate districts with more than one county in a district had an average population of 181,617 per district.

The Pending Legislative Apportionment Based on the 1960 Federal Census

A legislative apportionment is pending in New York, based on the 1960 census. See pp. 18-19, *infra*. Under this apportionment, a minority of 37% of the state's population will be able to elect a majority of the Assembly, and a minority of 38%, a majority of the Senate. In both houses minority over-representation will increase substantially over that present in the 1953 apportionment.

The 1960 census shows that New York City now has 46% of the state's population. The pending apportionment will give it only 37.3% of the Assembly seats and 36.8% of the seats in the Senate.

In the Assembly, Schuyler County will continue as the least populous district with 14,974, and the most populous will probably be one district in Monroe County, with a population of 190,343 (R. 237)—a ratio of 12.7 to 1. New York City's 56 assemblymen will represent an average of 132,511 each, as compared to the state-wide average of 108,272 per district. Despite an increase of almost 14,000 in the average population per district in the ten years from 1950 to 1960, the 23 least populous one-assemblyman counties still all show populations of less than half the state-wide average.

For the Senate the district populations will range from a high of 425,267—the average for the three districts in Nassau County—to the probable least populous district, comprising Putnam and Rockland counties (population: 162,840), for a ratio of 2.6 to 1.* New York City's 20 senators will represent an average population of 360,193, compared to the state-wide average of 284,926 per district. The 15 multi-county districts to be created upstate will have an average of only 207,528 per district.

The Continuing 1953 Legislative Apportionment, in Light of the 1960 Federal Census

During the ten years 1950 to 1960 substantial population shifts took place within New York State. As a result

* In making an apportionment the legislature has some discretion in drawing senate district lines for multi-county districts. It is likely, however, that geographic limitations will necessitate the formation of a district comprising Rockland and Putnam counties, in view of the rule requiring districts of equivalent populations.

some areas whose representation may have been fair at the beginning of the decade now are grossly under-represented. A minority of 33% of the state's population is now represented by a majority in the Assembly, and a minority of 41%, by a majority in the Senate.

Nassau and Suffolk, the two fastest-growing counties, are extreme examples of current under-representation. The six assemblymen apportioned to Nassau in 1953 now represent an average population of 212,634; the most populous assembly district in the state is now Nassau's 4th District (314,721). Suffolk's three assemblymen now represent an average population of 216,704, twice the state-wide average per district (108,272). The ratio between the most populous and the least populous district, Nassau's 4th and Schuyler County, is now 21 to 1.

In the Senate, Suffolk County's one senator now represents a population of 650,112 (state-wide average: 280,014). Nassau, whose senate representation will not increase in the pending apportionment, has an average of 425,267 represented by each of its three senate districts. The ratio between the most populous district (Suffolk) and the least populous (Saratoga, Warren and Essex counties) is now 3.9 to 1.

New York City shows different results, because in the 1960 census three of its four densely populated counties, Bronx, Kings and New York, show a population decline from 1950. As a result, the under-representation of its population in the legislature has temporarily decreased. Judge Levet's opinion notes this comparison (R. 297), but ignores the corresponding decrease in New York City's representation that will be mandated as soon as the pending apportionment is enacted. See p. 10, *supra*.

B. The Impairment of Votes in Voting for the Legislature Has Produced Harmful Results

There are at least two harmful results of malapportionment of the New York legislature about which there can be no reasonable disagreement: the handicap which minority domination has imposed on responsible state and local government—the City of New York in particular—and the subversion of the political party system which has resulted from long-continued control of the legislature by the same political party, largely a consequence of the method of legislative apportionment used in New York.

1. Domination of the legislature by a minority of the population has handicapped responsible state and local government. There is general agreement that in the federal system a strong national interest exists in encouraging vigorous and responsible state and local government. See House Comm. on Government Operations, *Federal-State Local Relations: Federal Grants-in-Aid*, H. R. Rep. No. 2533, 85th Cong., 2d Sess. 47 (1958). The decline of the state governments through their failure to solve the problems arising out of the rapid urbanization of the country, and the relationship of this failure to malapportionment of state legislatures, is also generally recognized. See United States Commission on Intergovernmental Relations, Report to the President 38-40 (1955).

New York State is no exception, and the City of New York in particular—by far the largest population center in the state—has suffered from minority domination of the New York State legislature.

At the hearing held by the court below the City offered a witness, Hon. Abraham D. Beame, the Comptroller of the City of New York, to prove the allegation of the complaint that the legislature of the State of New York for a number of years has unjustly discriminated against large segments of the population of the state in the allocation of the burdens of taxation and in the unequal and unjust distribution of funds derived by the state through the exercise of its taxing powers (complaint, par. 18, R. 192; see R. 132, 147).*

The court below rejected the City's offer of proof (R. 147), as well as the offer of appellants to prove by competent testimony the material set forth in the affidavit of appellant R. Peter Straus, specifying instances in which the residents of New York City are "short-changed" by legislation enacted by the minority-dominated legislature (R. 149). Such proof is relevant and its rejection without consideration prejudicial error. *See Baker* v. *Carr*, 369 U. S. 186, 194, fn. 15 (1962); *cf. Sincock* v. *Duffy*, 215 F. Supp. 169, 182 (D. Del. 1963), *appeal pending sub nom. Roman* v. *Sincock*, No. 307, Oct. Term, 1963. The substantial adverse effects of state legislation upon the City's legitimate interests can readily be established.** If appellants' position is not otherwise sustained, the minimum action which this Court should take is to reverse the court below on this ground and permit appellants, the City and

---

* The opinion of Judge Levet misinterpretes as a concession a statement made by counsel for the City at the hearing (see R. 296). The statement quoted by Judge Levet related only to the City's offer of proof through Comptroller Beame, as the context of the statement plainly shows (R. 147-48).

** See, for example, MAYOR ROBERT F. WAGNER, NINTH ANNUAL REPORT TO THE CITY COUNCIL AND TO THE PEOPLE OF NEW YORK CITY 9 (1963) (unfair restriction on City's debt limit).

Nassau County, which made a similar rejected offer (R. 149), to present their proof.

2. Domination of the legislature by a minority of the population has resulted in harmful one-party control. A consequence of malapportionment of the New York State legislature has been almost-perpetual control of both houses of the legislature by the Republican Party. Since 1919 when Governor Alfred E. Smith first took office, a Republican governor has held office for 19 years, and a Democrat or Democrat-Liberal, for 26 years. During these 45 years, however, the Republican Party lost control of both houses of the legislature for only one year (1935) and lost control of the Senate alone for only three other years (1936-38).

During 22 of those years, therefore, the state has had a governor of one party and a legislature in which both houses were controlled by the opposition.

In the last 25 years the Republican Party has never failed to win at least 55% of the seats in both houses. Yet in the last three elections for the state legislature, for example, the total vote for the Democratic legislative candidates has exceeded the total vote for the Republican candidates:

Election	Vote for Democratic Candidates*	Vote for Republican Candidates*	Democrats Elected	Republicans Elected
Assembly:				
1958	2,735,360	2,712,456	58	92
1960	3,557,043	3,309,830	66	84
1962	2,703,686	2,681,452	65	85
Senate:				
1958	2,732,471	2,703,309	24	34
1960	3,525,787	3,277,503	25	33
1962	2,714,107	2,709,435	25	33

* Includes votes cast on Liberal Party line for endorsed candidates. Source: WELLS, LEGISLATIVE REPRESENTATION IN NEW YORK STATE 8 (1963 ed.)

The partisan atrocity of the 1961 Congressional district gerrymander, see N. Y. STATE LAW §§ 110-12 (Cum. Supp. 1963); WELLS, *op. cit. supra* at 20-28, might well not have taken such an extreme form but for the fact that the Republican majority which enacted the measure was (at that time) secure in the knowledge that those who would suffer from it had almost no chance ever to gain control of the legislature.*

The political party system on which the government of our nation and the states is largely based has been unable to function in a responsible way in a state where one branch of government, the legislature, is in effect assigned to a particular political party. When the majority, if it votes for the gubernatorial candidate of one party, is unable, because its vote has been impaired, to give the same party a working majority in the legislature, "the legislative process must become a process of negotiation—or collusion—between parties rather than one of straightforward execution of a party program." KEY, POLITICS, PARTIES, AND PRESSURE GROUPS 328 (3d ed. 1952).

And neither the people nor the political party system have benefited from the long-entrenched one-party control of the New York State legislature, into which, barring an F. D. R.-inspired sweep, no new broom can reach.

---

* Compare the present view of Assembly Speaker Joseph F. Carlino:

> "An adverse decision in the United States Supreme Court on New York State's method of apportioning legislative seats could result in a Democratic legislature, Mr. Carlino pointed out, making him the minority leader of the Assembly, instead of the Speaker."
>
> N. Y. Times, Sept. 8, 1963, p. 42, col. 1.

II.

The New York Method of Legislative Apportionment and How It Impairs Votes

Under the present constitution, both the Senate and the Assembly ostensibly are required to be apportioned on the basis of population. The constitution provides that each senate district "shall contain as nearly as may be an equal number of inhabitants, excluding aliens," N. Y. Const. Art. III §4, par. 1. The constitution also provides that the members of the Assembly shall be apportioned among the several counties of the state "as nearly as may be according to the number of their respective inhabitants, excluding aliens,"* and "no county shall hereafter be erected unless its population shall entitle it to a member." *Id.* §5, par. 1. Since adoption of the constitution of 1894, however, apportionment of the members of the Senate and Assembly has been effected in accordance with the method of apportionment prescribed in the constitution—a method of apportionment which does not apportion either house in proportion to population.** See N. Y. Const. Art. III §§2-5.

---

* Since New York uses citizen population as the measure for apportionment purposes, "population" in this brief means citizen population, unless otherwise noted.

** This method of apportionment has continued substantially unchanged from 1894 to the present time. In 1931 provisions with respect to use of the federal census to determine population were added by amendment to Article III §§4 and 5. By amendment adopted in 1945 minor substantive changes were made to facilitate the creation of senate districts and assembly districts within certain counties. See Article III §4, par. 1; §5, par. 4. In addition to prescribing the method of apportionment, the 1894 constitution itself made an apportionment of the legislature, which was superseded by the apportionment statute enacted in 1907. These moot provisions for apportionment of the Assembly were deleted from Article III §5 by the 1934 amendment. See New York State Con-

Although the New York constitution has required that an apportionment of the legislature be made once every ten years, see *id.* §4, par. 1, §5, par. 1, the legislature has enacted an effective apportionment statute on only four occasions since 1894: in 1907, 1917, 1943 and 1953. See N. Y. Laws 1907, c. 727; Laws, 1917, c. 798; Laws 1943, c. 359; Laws 1953, c. 893. Apportionment statutes enacted in 1906 and 1916 were held invalid by the New York Court of Appeals as not in compliance with the method of apportionment prescribed in the constitution. See *Matter of Sherrill* v. *O'Brien*, 188 N. Y. 185 (1907); *Matter of Dowling*, 219 N. Y. 44 (1916). The validity of the apportionment statute enacted in 1907 was challenged in 1911, but the court of appeals refused to pass on its constitutionality because of the objector's laches in waiting until after four elections had been held. See *Matter of Reynolds*, 202 N. Y. 430 (1911). The validity of the statute enacted in 1943 was sustained in *Matter of Fay*, 291 N. Y. 198 (1943).

The 1953 apportionment is now in effect in New York State. See N. Y. STATE LAW §§121, 123. The New York constitution requires that a new legislative apportionment be effected before 1967, on the basis of the 1960 census figures. See N. Y. CONST. Art. III §4, par. 1. While New York law has been that no remedy exists if the legislature fails to reapportion as required, *Burns* v. *Flynn*, 268 N. Y. 601 (1935), a reapportionment almost certainly will be

---

STITUTIONAL CONVENTION COMMITTEE, AMENDMENTS PROPOSED TO NEW YORK CONSTITUTION 1895-1937 184-87 (1938). The corresponding provisions for the 1894 apportionment of the Senate were deleted by an amendment approved by the voters in the general election of 1962. See N. Y. CONST. Art. III §3 (Cum. Supp. 1963). All apportionments since the apportionment made in the 1894 constitution have been made by statute.

enacted promptly. The governor and a majority of both houses of the legislature are of the same party, and the majority party will gain seats in both houses on a reapportionment. See JEWELL, THE POLITICS OF REAPPORTIONMENT 239-40 (1962).

The county is the basic geographic unit for the purpose of apportioning both the Senate and Assembly. No county may be divided in forming a senate district, except to make two or more districts wholly within the county. N. Y. CONST. Art. III § 4, par. 1. Assemblymen are apportioned by counties, *id.* § 5, par. 1, the exception being that two sparsely-populated upstate counties, Fulton and Hamilton, are treated as a single county in apportioning the Assembly. *Ibid.* There are 62 counties in the state.

The number of senators is fixed at not less than 50 and may vary with each apportionment. *Id.* § 2, § 4, par. 3. In the 1953 apportionment it was 58; in the pending apportionment based on the 1960 census it will be 57. The number of assemblymen is fixed at 150. *Id.* § 2. Both senators and assemblymen are elected for two-year terms, on the even-numbered years. *Ibid.*

In the ten-year period from 1950 to 1960 the population of New York State increased from 14,203,449 to 16,240,786.

The method of apportionment prescribed in the New York constitution results in a substantial impairment of the voting power of the majority of the population of New York State—in both the Senate and the Assembly and on every apportionment—primarily because the legislature in making an apportionment is required by the constitution to follow certain rules the inevitable effect of which is to limit the representation of the most populous counties.

The remainder of this section outlines the rules for apportioning the Senate and the Assembly, with emphasis on those which limit the representation of the most populous counties, illustrated by examples of how these rules have operated in the apportionment now in effect, and how they will operate in the pending apportionment based on the 1960 census—unless this Court holds New York's method of legislative apportionment invalid under the Fourteenth Amendment.*

A. Apportionment of the Senate

The members of the Senate are apportioned by two different methods: by one method to each county which has 6% or more of the state's population and by another method to the other counties of the state. In senate representation, therefore, the population of the state is divided into two classes: those who live in the counties each of which has 6% or more of the state's population and those who live in the rest of the state. This two-class discrimination in apportionment of the Senate results in a systematic undervaluation of the vote of a person who lives in one of the 6%-or-more counties and a systematic over-valuation of the vote of a person who lives elsewhere in the state.

---

* For a more detailed analysis of the New York apportionment rules and their historical background see Silva, *Apportionment in New York*, 30 FORDHAM L. REV. 581 (1962) (senate apportionment), Silva, *Apportionment of the New York Assembly*, 31 FORDHAM L. REV. 1 (1962). See also WELLS, LEGISLATIVE REPRESENTATION IN NEW YORK STATE (1963 ed.). Professor Silva was appellants' expert witness at the trial (R. 154).

In the present apportionment only five counties are in the 6%-or-more class: Bronx, Kings, New York and Queens counties, all within the City of New York, plus upstate Erie County (Buffalo and environs). Nassau County, a suburb of New York City, will be added to this class in the pending apportionment based on the 1960 census.

In the present apportionment the five 6%-or-more counties had 57% of the total population of the state, but only 47% of the senate representation. In the pending apportionment this disparity will increase: the six counties, which now have 59% of the state's population, will be apportioned only 46% of the Senate. This impairment of the voting power of the population of these counties is caused primarily by two rules (discussed *infra*) which the state constitution requires the legislature to observe in making a senate apportionment: the "full-ratio" rule and the rule requiring an increase in the total number of senators.

1. **Apportionment of senators to a county having 6% or more of the state's population.** The first step in apportioning the Senate is to determine the (constitutional) ratio, which under the constitution must be obtained by dividing the state's total population by 50, the number of senators in the 1894 apportionment, N. Y. Const. Art. III §4, par. 3.

The next step is to apportion one senator for each full ratio of population to each county that has at least three full ratios, or 6% of the state's population. In the 1953 apportionment 27 senators were apportioned on this basis to the five most populous counties:

County	Number of Senators	Population (Ratio = 284,069)
Kings	9	2,595,187
New York	6	1,795,726
Queens	5	1,484,214
Bronx	4	1,378,181
Erie	3	878,502
	27	8,131,810

In the pending apportionment, 26 senators will be apportioned to these counties, with Nassau being added:

County	Number of Senators	Population (Ratio = 324,816)
Kings	7	2,518,510
Queens	5	1,733,081
New York	4	1,584,069
Bronx	4	1,368,207
Nassau	3	1,275,801
Erie	3	1,039,648
	26	9,519,316

2. The "full-ratio" rule. The constitution contains certain rules which were devised by the constitutional convention of 1894 in order to limit the senate representation of New York and Kings counties, the only counties in the state which at that time had 6% or more of the state's population. One of these rules is the "full-ratio" rule, which has applied in each subsequent senate apportionment.* It pro-

* The other two rules devised to limit the senate representation of New York and Kings counties are: (1) No county shall have more than one-third of all the senators; and (2) No two counties or the territory thereof as organized in 1894, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators. See N. Y. CONST. Art. III § 4, par. 2. Because of subsequent population trends, these rules have never been applicable in an apportionment, and it is unlikely that they ever will apply.

vides: "No county shall have four or more senators unless it shall have a full ratio for each senator." N. Y. Const. Art. III §4, par. 2. Mainly because of population trends within the state since 1894, the "full-ratio" rule has come to apply not only to New York and Kings counties but to other counties as well. Bronx County was created from part of New York County in 1914 and became one of the 6%-or-more counties in the 1917 apportionment. As the population of the New York City area has expanded outwards, the counties of Queens (since the 1943 apportionment), and now Nassau have reached the 6% level. In addition, Erie County upstate has had just over 6% of the state's population on each apportionment after 1894.

The "full-ratio" rule is a major cause of the discrimination against the population of these counties in senate representation. Unlike other counties, a county which has 6% or more of the state's population cannot receive an additional senator for any remainder in population which is less than a full ratio, however large this remainder may be. When the population remainder is small, the "full-ratio" rule has no effect, since a small population remainder would not otherwise entitle a 6%-or-more county to an additional senator. However, the number of 6%-or-more counties is sufficiently large so that the likelihood is that in every apportionment several of them will be deprived of an additional senator by the rule, thus producing a substantial under-representation of the population of the county so affected and of the 6%-or-more counties taken as a class.

To illustrate, in the 1953 apportionment Bronx County and New York County were each denied an additional senator by the "full-ratio" rule. Bronx County's unrepre-

B. Apportionment of the Assembly

Like the Senate, the members of the Assembly are apportioned by different methods to different classes of counties, and the rules contained in the state constitution assure that the most populous counties as a class will be substantially under-represented. The primary cause of such under-representation in the Assembly is the rule requiring that each county be apportioned one assemblyman, regardless of its population (except for Fulton and Hamilton counties, which are treated as one district for this purpose). See N. Y. Const. Art. III §5, par. 1.

The constitution sets the size of the Assembly at 150; the ratio for apportioning assemblymen is determined by dividing the state's total population by this number. *Id.*, par. 2. The constitution divides the 61 counties into three classes:

(1) *First-class counties*: a county which has less than 1% of the state's population;

(2) *Second-class counties*: a county which has between one and one-half and two assembly ratios (1 to 1⅓% of the state's population); and

(3) *Third-class counties*: a county which has 1⅓% (two assembly ratios) or more of the state's population.

The third-class counties are the counties whose population is substantially under-represented in the Assembly. In the 1953 apportionment there were 12 third-class counties, which contained 77% of the state's population, but were apportioned only 65% of the assembly seats. In the pending apportionment there will be 14 third-class counties, containing 80% of the state's population but to be apportioned only 67% of the Assembly. All of the counties with

6% or more of the state's population, the class of counties whose population is substantially under-represented in the Senate, are, of course, included among the third-class counties in apportioning the Assembly.*

The first step in apportioning the Assembly is to apportion one assemblyman to each county. An additional assemblyman is then apportioned to each of the other counties, that is, the counties of the second class** and third class. Finally the remaining assemblymen are apportioned among the third-class counties, roughly according to population.

A combination of factors makes the Assembly today even less representative of population than the Senate: the guarantee of at least one assemblyman to each of the 61 counties, while the total number of assemblymen is fixed at 150, and the rule which creates counties of the second class. Also the fact that the population of New York State is unevenly distributed—increasingly concentrated in the metropolitan areas with a continuing relative decline in the population of the sparsely-populated upstate rural counties.

To summarize the 1953 apportionment of the Assembly and the pending apportionment based on the 1960 census:

---

* In the 1953 apportionment the five 6%-or-more counties (57% of the state's population) had 47% of the assembly seats. In the pending apportionment the six 6%-or-more counties, with 59% of the state's population, will have 48% of the Assembly.

** The classification for counties of the second class—counties which have between one and one-half and two assembly ratios of population—is an anachronism. It contributes to the under-representation of the population of the third-class counties, and was originally intended to increase the assembly representation of the nine counties which were in this class in 1894. See 3 NEW YORK STATE CONSTITUTIONAL CONVENTION (1894), REVISED RECORD 1031-32 (1900). In the 1953 apportionment, however, there were only four counties in this class: Broome, Niagara, Orange, and Richmond. There will be only three —Broome, Dutchess and Orange—in the pending apportionment.

PENDING APPORTIONMENT BASED ON 1960 CENSUS

Third-Class Counties*	Population	Assemblymen	Average Population per Assemblyman
Bronx	1,368,207	10	136,821
Albany	269,088	2	134,544
Queens	1,733,081	13	133,314
Kings	2,518,510	19	132,553
New York	1,584,069	12	132,006
Westchester	782,179	6	130,363
Suffolk	650,112	5	130,022
Erie	1,039,648	8	129,956
Oneida	259,330	2	129,665
Nassau	1,275,801	10	127,580
Niagara	235,677	2	117,839
Monroe	571,029	5	114,206
Richmond	216,764	2	108,382
Onondaga	414,770	4	103,693
Subtotal	12,918,265	100	129,183
Second-Class Counties			
Broome	209,597	2	104,799
Orange	179,873	2	89,937
Dutchess	171,395	2	85,698
Subtotal	560,865	6	93,478
First-Class Counties			
45 counties (least populous—Schuyler—14,974) (most populous—Schenectady 150,688)	2,761,656	44	62,765
Entire State	16,240,786	150	108,272 (ratio)

APPORTIONMENT OF 1953

Third-Class Counties*	Population	Assemblymen	Average Population per Assemblyman
Monroe	475,037	4	118,759
Kings	2,595,187	22	117,963
Albany	234,068	2	117,034
Bronx	1,378,181	12	114,848
Queens	1,484,214	13	114,170
New York	1,795,726	16	112,232
Onondaga	334,453	3	111,484
Erie	878,502	8	109,812
Nassau	655,690	6	109,281
Oneida	216,486	2	108,243
Westchester	601,682	6	100,280
Suffolk	261,003	3	87,001
Subtotal	10,910,229	97	112,477
Second-Class Counties			
Richmond	185,032	2	92,516
Niagara	184,161	2	92,080
Broome	181,496	2	90,748
Orange	148,429	2	74,214
Subtotal	699,118	8	87,390
First-Class Counties			
46 counties (least populous—Schuyler—14,066) (most populous—Schenectady—139,304)	2,594,102	45	57,648
Entire State	14,203,449	150	94,689 (ratio)

* "Remaining members" apportioned to third-class counties on the basis of the so-called Brown formula. See R. 22-23.

To round out the procedure for apportioning the Assembly, as in the case of the Senate the constitution prescribes certain districting rules, some of which appear to be mandatory, and some merely directive. N. Y. Const. Art. III §5, par. 4; *cf. Matter of Sherrill* v. *O'Brien, supra.*

Mandatory rules:

(1) The number of assembly districts in a county shall be equal to the number of assemblymen to which that county is entitled—that is, a multi-member county shall be divided into single-member districts, and assemblymen apportioned to a county cannot run in the county at-large.

(2) Each assembly district shall consist of contiguous territory.

(3) Each assembly district shall be wholly within the same senate district.

(4) In a county having more than one senate district, the same number of assembly districts shall be placed in each senate district, unless the assembly districts cannot be evenly divided among the county's senate districts, in which case one more assembly district shall be put in such county's most populous senate district, or one less assembly district shall be put in that county's least populous senate district.

(5) No town, except a town having more than one and one-half assembly ratios (1% of the state's population), and no city block enclosed by streets or public ways shall be divided in the formation of assembly districts.

(6) No assembly district shall contain a greater excess of population over an adjoining assembly district in the

same senate district than the population of a town or block therein adjoining such assembly district.

DIRECTIVE RULES:

(1) Towns or blocks which, from their location, may be included in either of two assembly districts shall be so placed as to equalize the two districts.

(2) Each assembly district in the same county shall contain, as nearly as may be, an equal number of citizen inhabitants.

(3) Each assembly district shall consist of "convenient" territory.

(4) Each assembly district shall be as compact as practicable.

sented remainder was 241,905 over four full ratios of population. Consequently, its four senate districts had by far the largest population per district of any in the state. Each Bronx district had a population of about 344,545 against the state-wide average of 244,887 per district. The population of each Bronx district was greater than *the entire population* of Onondaga County upstate (334,453), which nonetheless was apportioned *two* senators.

In the pending apportionment based on the 1960 census, Nassau, New York and Kings counties will each be deprived of an additional senator:

	Senate-seat Remainder
Nassau	301,353
New York	284,805
Kings	244,798
	830,956

(See Plaintiffs' Exhibit 1, R. 180, 243.)

Thus in effect over 800,000 residents of those counties will not be counted in the apportionment of senate seats; their existence is ignored. The result, for example, is that the three senate districts of Nassau County will have an average population of 425,267, as against the state-wide average of 284,926 per district. By contrast, Monroe County upstate will receive the *same* number of senators as Nassau, although Monroe's population of 571,029 is *less than half* that of Nassau (1,275,801). Onondaga County (population: 414,770) will again be apportioned *two* senators, despite the fact that each of Nassau's three senate districts will have a population larger than all of Onondaga County.

3. The rule requiring an increase in the number of senators. The other major cause of discrimination against the

counties having 6% or more of the state's population is the rule requiring an increase in the number of senators, as it has been interpreted by the New York Court of Appeals.

After apportioning senators to each of the counties which has 6% or more of the state's population, the legislature must determine the size of the Senate. The constitution provides:

> "• • • the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent." N. Y. CONST. Art. III §4, par. 3.

As interpreted by the court of appeals, the number of senators to be added is determined by comparing the number of senators to which each of the 6%-or-more counties is entitled under the new apportionment with the number apportioned to it in the 1894 apportionment. When the county has been divided since 1894—as is the case with New York (part of which became Bronx County in 1914, see N. Y. Laws 1912, c. 548) and Queens (part became Nassau in 1899, see N. Y. Laws 1898, c. 588)—the number of senators apportioned to the counties comprising substantially the same territory as was contained in such original county is compared with the number of senators given such county in the 1894 apportionment. Any increase resulting from such comparison is added to 50 to give the whole number of senators, and *all* the additional senators are apportioned to the counties which each have less than

6% of the state's population. See *Matter of Fay, supra; Matter of Dowling, supra.*

In the 1953 apportionment the total number of senators was thus increased to 58:

County	In 1894	In 1953	Increase
Kings	7	9	2
New York	12	6	0
Bronx		4	
Queens	1	5	6
Nassau		2*	
Erie	3	3	0
		Total increase	8

In the pending apportionment the total number of senators will be 57:

County	In 1894	Based on 1960 census	Increase
Kings	7	7	0
New York	12	4	0
Bronx		4	
Queens	1	5	7
Nassau		3	
Erie	3	3	0
		Total increase	7

Senators are apportioned to the 6%-or-more counties on the basis of the constitutional ratio (population of the state ÷ 50), which is substantially larger than the actual population-per-district figure, since in any current apportionment the number of senators must be increased to well above 50. A county with 6% or more of the state's population is thus barred from representation in the Senate proportionate to its population. In fact, the arithmetic re-

* Nassau was apportioned a third senator on the second ratio. See p. 27, *infra*.

sult is that the comparative voting power of the population of the 6%-or-more counties *decreases* as their share of the state's total population *increases*.

The dilution effect of this provision has been further increased by judicial interpretation. As the rule has been interpreted, no decrease in the total number of senators is to be recognized if a county which has 6% or more of the state's population in an apportionment should happen to be entitled to fewer senators than it was apportioned in the 1894 apportionment. See *Matter of Fay, supra*. For example, in the 1953 apportionment New York and Bronx counties together had two less senators than New York (which then included part of Bronx) had in 1894; in the pending apportionment they will have four less. In each instance these senators must remain in the total number to be apportioned. As a result they must be apportioned to the counties other than the counties which each have 6% or more of the state's population: the New York City counties of Bronx, New York, Queens and Kings, Erie County and, in the pending apportionment, Nassau County.

4. Apportionment of the remaining senators. After senators have been apportioned to each county which has 6% or more of the state's population and the size of the Senate has been determined, the next step is to apportion the remaining senate seats, including all the additional seats, to the other counties. In the 1953 apportionment 31 senators remained to be apportioned. The same number will be available in the pending apportionment.

In order to apportion the remaining senators, a second ratio must be determined: a population-per-district figure

obtained by dividing the number of senators remaining into the total population of the counties other than the counties in the 6%-or-more class. Senators are apportioned to counties in the 6%-or-more class on the basis of the constitutional ratio; they are apportioned to the other counties on the basis of this second ratio.*

The legislature has discretion in apportioning the remaining seats—including the additional seats—to the counties on the basis of the second ratio. In practice each of the other counties is apportioned a senator for each full second ratio, and a major fraction thereof, and a county with a population close to but less than one full second ratio receives one senator. The balance of the senators remaining is then apportioned by creating multi-county districts of roughly equal populations.

The disparity between the population-per-senator figures for the counties in the 6% or more class and the other counties is substantial:

		Population	÷	Number of Senators	=	Population per Senator
1960 *(pending)*	6%-or-more counties	9,519,316		26		366,128
	all other counties (second ratio)	6,721,470		31		216,822
	Entire State	16,240,786		57		284,926
	(constitutional ratio)	"	÷	50		324,816
1953	6%-or-more counties	8,131,810		27		301,178
	all other counties (second ratio)	6,071,639		31		195,859
	Entire State	14,203,449		58		244,887
	(constitutional ratio)	"	÷	50		284,069

(See Plaintiff's Exhibit 2, R. 180, 244)

* In adopting appellees Simon and Lefkowitz' summary of the method of apportioning the Senate (R. 297-98), the court below misstated the method, by failing to note that the constitutional ratio (population of the state ÷ 50) is used *only* in apportioning senators to a county which has 6% or more of the state's population. *Cf. Matter of Fay, supra.*

The 1953 apportionment and the pending apportionment based on the 1960 census may be summarized as follows:

PENDING APPORTIONMENT BASED ON 1960 CENSUS

County	Population	Senators on basis of constitutional ratio = 324,816	Average Population per Senator
Nassau	1,275,801	3	425,267
New York	1,584,069	4	396,017
Kings	2,518,510	7	359,787
Queens	1,733,081	5	346,616
Erie	1,039,648	3	346,549
Bronx	1,368,207	4	342,052
Subtotal	9,519,316	26	366,128
		on basis of second ratio = 216,822	
Albany	269,088	1	268,088
Westchester	782,179	3	260,726
Oneida	259,330	1	259,330
Niagara	235,677	1	235,677
Richmond	216,764	1	216,764
Suffolk	650,112	3	216,704
Broome	209,597	1	209,597
Onondaga	414,770	2	207,385
Monroe	571,029	3	190,343
Subtotal	3,608,546	16	225,534
Multi-county districts	3,112,924	15	207,528
Entire state	16,240,786	57	284,926

APPORTIONMENT OF 1953

County	Population	Senators on basis of constitutional ratio = 284,069	Average Population per Senator
Bronx	1,378,181	4	344,545
New York	1,795,726	6	299,287
Queens	1,484,214	5	296,842
Erie	878,502	3	292,834
Kings	2,595,187	9	288,354
Subtotal	8,131,810	27	301,178
		on basis of second ratio = 195,859	
Suffolk	261,003	1	261,003
Monroe	475,037	2	237,518
Albany	234,068	1	234,068
Nassau	655,690	3	218,563
Oneida	216,486	1	216,486
Westchester	601,682	3	200,561
Richmond	185,032	1	185,032
Niagara	184,161	1	184,161
Broome	181,496	1	181,496
Onondaga	334,453	2	167,226
Subtotal	3,329,108	16	208,069
Multi-county districts	2,742,531	15	181,617
Entire state	14,203,449	58	244,887

5. **Miscellaneous other rules.** To complete the picture, the constitution contains certain other rules for creating districts, some of which are mandatory, others merely directive. N. Y. Const. Art. III §4, par. 1; See *Matter of Sherrill* v. *O'Brien, supra.*

The following rules are mandatory:

(1) No county shall be divided in the formation of a senate district except to make two or more senate districts within such county. This rule alone may cause a substantial disparity between the populations of particular districts, in a particular apportionment.

(2) Each senate district shall consist of contiguous territory.

(3) No senate district shall contain a greater excess of population over an adjoining district in the same county than the population of a town or block therein adjoining such district.

(4) No town, except a town having a population in excess of a full constitutional ratio (2% of the state's population), and no city block enclosed by streets or public ways, shall be divided in the formation of senate districts.

The following are directive, rather than mandatory:

(1) Each senate district shall contain, as nearly as may be, an equal number of citizen inhabitants.

(2) Each senate district shall be in as compact form as practicable.

(3) Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to equalize the number of citizen inhabitants in the two districts.

A mandatory rule must be followed in an apportionment and takes precedence over a directive rule. The legislature has discretion in choosing the rule to follow when two mandatory or two directive rules conflict. *See Matter of Sherrill* v. *O'Brien, supra* at 205.

(b) Under the Fourteenth Amendment any apportionment of the New York legislature—both houses—must be consistent with the principle of equality of voting power.

By either argument no defense of justification is available to the State.

(a) *The New York method of legislative apportionment is a* per se *violation of the Fourteenth Amendment.* The New York legislative apportionment statute mandated by the New York constitution impairs votes as a result of an invidious discrimination against a particular class of people in the state. This discrimination occurs in both the Assembly and the Senate. As a result, in each house a majority of the people is reduced to minority representation—representation which is substantially less than representation proportionate to population.

Such a situation is intolerable in a democracy. A minimum ground rule under *Baker* v. *Carr* must be that no justification can be made for an invidiously discriminatory system which delivers both houses of the legislature to minority rule. *See, e.g., Sincock* v. *Duffy, supra* at 189; *Toombs* v. *Fortson*, 205 F. Supp. 248, 257 (N. D. Ga. 1962); *Baker* v. *Carr*, 206 F. Supp. 341, 349 (M. D. Tenn. 1962). A legislative apportionment which thus impairs the voting power of the majority in both houses is *per se* invalid. If the minority were allowed to justify the continuation of such an apportionment on any ground whatever, the door would be opened to nullify the practical significance of *Baker* v. *Carr*. Procedurally, if not substantively, the exception of justification would prove to be as broad as the rule itself.

Furthermore, once such an apportionment is in effect, the size of the minority representation afforded the majority is relatively unimportant. Once a minority is assured of working control of both houses of the legislature—a margin of control beyond a bare majority—the damage is done. The majority then has lost any practical opportunity for exerting its political weight in voting for the legislature, *see MacDougall* v. *Green*, 335 U. S. 281, 284 (1948).

(b) *Any apportionment of the New York legislature must be consistent with the principle of equality of voting power.* Although we recognize that its reasoning is expressly limited to a state-wide election, *Gray* v. *Sanders*, 372 U. S. 368 (1963), nonetheless takes the position that once a state chooses the class of voters and specifies their qualifications, there is no constitutional way by which the state can evade equality of voting power, however reasonable may be the state's policy in seeking to do so. *See id.* at 381, 370. As previously discussed, see pp. 6-8, *supra*, equality of voting power is inherent in the grant of suffrage made by the State of New York. It establishes but one class of voters throughout the state, all of whom are required only to meet specified qualifications. The City's argument is simply that New York having granted everyone this right to vote, the Equal Protection Clause assures each individual in the state that, having qualified to vote, his vote will have equal weight, whether he is voting for the governor, a state senator or an assemblyman. When the people of a state in a state-wide election choose the members of the legislative body which is to make laws for everyone in the state, an equal say in this choice is of no less importance to each individual than the equal say the

ARGUMENT

POINT I

The New York method of legislative apportionment results in an arbitrary impairment of votes by means of individiously discriminatory geographic classification.

This Court has stated the holding of *Baker* v. *Carr* to be:

> "* * * that a justiciable federal constitutional cause of action is stated by a claim of arbitrary impairment of votes by means of invidiously discriminatory geographic classification." *WMCA* v. *Simon*, 370 U. S. 190, 191 (1962).

The City contends that a legislative apportionment is invalid if it results in impairment of votes by means of invidious discrimination (see Subhead *A*, *infra*). We there argue that an apportionment which systematically discriminates against classes of people within a state—as does New York's—is equally as invalid as an apportionment which, as a result of population shifts and the legislature's long-continued failure to enact a reapportionment, no longer evidences any discernible pattern but is instead an irrational "crazy quilt"—like the Tennessee apportionment involved in *Baker* v. *Carr*.

However, even if elements of arbitrariness and irrationality must be found in the New York method of legislative apportionment to invalidate it under the Fourteenth Amendment, such elements exist (see Subhead *B*, *infra*).

A. The New York Method of Legislative Apportionment Results in Invidious Discrimination against the Voting Power of Particular Classes of People by Means of Geographic Classification

When this Court stated the invalidity of a state legislative apportionment in terms of "invidious discrimination," *see WMCA* v. *Simon*, *supra* at 191, it adopted a test which has recognized standards in other fields of constitutional law. State action which results in an impairment of the voting power of people in the state is invalid under the Fourteenth Amendment if there is present the element of "intentional or purposeful discrimination between persons or classes." Such discrimination may result from the deliberate intent to discriminate, or from "systematic or long-continued" action the reasonably foreseeable consequence of which is discrimination—here systematic and long-continued impairment of the voting power of a particular class of people, those who reside in a particular area of the State of New York. *See Snowden* v. *Hughes*, 321 U. S. 1, 7-10 (1944), and cases cited.

1. The New York method of legislative apportionment results in a substantial impairment of votes in each house of the legislature. No argument is needed to establish that the New York method of legislative apportionment results in a substantial impairment of votes. The voting power of a particular class of the population is substantially impaired in both the Assembly and the Senate, and in both the present apportionment and the pending apportionment based on the 1960 census.

In the Assembly, the third-class counties had 77% of the population, but only 65% of the members of the As-

sembly in the 1953 apportionment. In the pending apportionment this class of counties will have 80% of the population, compared with 67% of the assembly seats.

In the Senate, the class of 6%-or-more counties had 57% of the population, but only 47% of the senate seats in the 1953 apportionment. In the pending apportionment the population of this class, which has increased to 59% of the state's population in the 1960 census, will have its representation *reduced* to 46% of the senate seats.

The comparisons between population and legislative representation, standing alone, suffice to establish the substantial "impairment of votes." If more be needed, the percentages can be translated in numbers of people. In the pending apportionment, for example, the statistic that the 6%-or-more counties will be apportioned 46% of the Senate (26 seats) to represent 59% of the state's population means that the population of the rest of New York State would have to increase *by 4,628,000*, in order for its 31 senators to represent the same average population per district as is represented by the senators from the 6%-or-more counties.

Since appellants have also shown that, measured by other reasonable criteria, the impairment of votes in each house is substantial (see pp. 9-12, *supra;* Appellants' Brief pp. 31-37), they have proved at least a *prima facie* case of invidious discrimination in each house. *See, e.g., Davis* v. *Synhorst*, 217 F. Supp. 492, 497 (S.D. Iowa 1963); *Sincock* v. *Duffy*, *supra* at 189; *Moss* v. *Burkhart*, 207 F. Supp. 885, 891 (W.D. Okla. 1962). There is sound reason for this procedural rule requiring the state to justify the existence of substantial impairments of votes in a legislative appor-

tionment. As a practical matter, an apportionment which produces such results is effected in one of four ways: by a systematic classification which impairs the votes of those who live in a significant number of geographic units of representation; by a long-continued failure to reapportion despite unequal population growth or shifts among such units; by deliberate legislative intent to discriminate against a particular segment of the population; or by enactment of an apportionment which, although not systematically or deliberately discriminatory, is arbitrary and thus violates the standard of due process. Thus it is reasonable to presume *prima facie* the existence of the elements of invidious discrimination when substantial impairment of votes has been shown.

In this case, however, appellants have proved more, for they have clearly established systematic *and* long-continued discrimination in New York's method of apportionment.

2. The New York method of legislative apportionment discriminates intentionally against particular classes of people by impairing their votes. That the New York method of legislative apportionment has made an intentional discrimination, both systematic and long-continued, between classes of counties ("geographic classification"), based on their respective populations, is beyond argument.*

In the Senate the discrimination is against the population of the class of counties which each have 6% or more of the state's population (5 in the 1953 apportionment; 6

* In fact, Appellees Simon and Lefkowitz have stated: "We do not contend that the New York apportionment formula was intended to be based solely upon a population standard; the carefully prepared provisions of N. Y. CONST. Art. III §§ 2-5, are by no means an accident." Motion to Dismiss or Affirm at 20-21, *WMCA* v. *Simon*, October Term, 1962, No. 460.

in the pending apportionment) and in favor of the population of the class consisting of all other counties in the state.

In the Assembly the discrimination is against the population of the class of counties which each have 1⅓% or more of the state's population (12 in the 1953 apportionment, 14 in the pending apportionment) and in favor of the other two classes of counties created by the method of apportioning the Assembly, which together include all other counties in the state.

Discrimination is effected in the Senate by the "full-ratio" rule, see pp. 22-24, *supra*, and the rule requiring an increase in the number of senators, see pp. 24-27, *supra*; in the Assembly by the one-assemblyman-per-county rule, and, to a lesser extent, by the rule creating counties of the second class, see pp. 32-33, *supra*.

It is also beyond argument that to the extent that the method of apportioning the Senate discriminates against popular representation of Kings, New York and Bronx counties, as constituted in 1894, this discrimination was done with deliberate intent. This deliberate intent is apparent on the face of Article III of the constitution, which states three rules, all in the same paragraph (N. Y. CONST. Art. III §4, par. 2):

> (1) The rule that "* * * no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators"—there then being only two counties, New York and Kings, "separated by * * * public waters" which foreseeably could have been limited by the rule at that time.

(2) The rule that "no county shall have more than one-third of all the senators * * *." Again, at that time only New York and Kings foreseeably could have been limited thereby.

(3) The rule that "no county shall have four or more senators unless it shall have a full ratio for each senator" was aimed primarily at New York and Kings, the only two counties in this class in 1894.*

The debates in the 1894 constitutional convention also support this conclusion. See Appellants' Brief, Appendix C, pp. 134-37.

In short, appellants have proved all the elements of "invidious discrimination" under the rule stated by this Court in *WMCA* v. *Simon, supra,* unless something more by way of proof is required—as the court below held.

3. Appellants have proved "invidious discrimination" against the class of people whose votes are impaired in each house of the legislature. This is a case involving the rights of individuals—the right of a voter to cast his ballot and have it counted. *See Baker* v. *Carr, supra* at 208. Under the Equal Protection Clause, this Court has consistently applied a strict standard in testing the validity of state action when individual rights are involved. *NAACP* v. *Button,* 371 U. S. 415 (1963); *Sherbert* v. *Verner,* 374 U. S. 398 (1963); *compare Gomillion* v. *Lightfoot,* 364 U. S. 339 (1960), *with Hunter* v. *Pittsburgh,* 207 U. S. 161 (1907), *Skinner* v. *Oklahoma,* 316 U. S. 535 (1942), *with William-*

* Erie County with a population between two and three constitutional ratios, is the only other arguable target of the "full-ratio" rule in 1894. The next most populous county, Monroe, had a population substantially less than two constitutional ratios. In practice, no county other than New York and Kings was adversely affected by the rule until the 1943 apportionment, when it deprived Queens of a seat.

son v. *Lee Optical*, 348 U. S. 483 (1955); *Brown* v. *Board of Education*, 347 U. S. 483 (1954), *with McGowan* v. *Maryland*, 366 U. S. 420 (1961); *Griffin* v. *Illinois*, 351 U. S. 12 (1956), *with Kotch* v. *Board of River Port Pilot Comm'rs*, 330 U. S. 552 (1947); *see Morey* v. *Doud*, 354 U. S. 457, 471 (BLACK, *J.*, dissenting); *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, fn. 4 (1938) (including state legislation "which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, * * *").

When the "basic civil rights of man" are invaded by state action, *Skinner* v. *Oklahoma*, *supra* at 541, the presumption of constitutionality which otherwise would attach to the state's action, *see Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78-79 (1911), is overcome. Once the discrimination is shown, the state has the burden of establishing that the discrimination is reasonable. *See, e.g., Griffin* v. *Illinois*, *supra*.

Any impairment of the vote, "a fundamental political right, became preservative of all rights," *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 (1886), must be subject to the same strict constitutional standard that applies to state action which infringes on other individual rights. "It is a great privilege to chuse such persons, as are to bind a man's life and property by the laws they make." *Ashby* v. *White*, 2 *Ld. Ray.* 938, 958, 92 Eng. Rep. 126, 139 (House of Lords 1703) (HOLT, *C.J.*). *See South* v. *Peters*, 339 U. S. 276, 279 (1950) (DOUGLAS, *J.*, dissenting):

> "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government."

In short, the correct standard of proof is no greater than that required of plaintiff in determining the validity of state action affecting his individual rights—not the standard which the court below applied (see R. 307, 313).

Under the correct standard, appellants established at least a *prima facie* case when they proved that the New York method of legislative apportionment results in substantial impairment of votes, or, alternatively, that it discriminates against particular classes of people in the state by impairing their votes. *Cf. Neal* v. *Delaware*, 103 U. S. 370, 397 (1880) (*prima facie* violation of Fifteenth Amendment shown by fact that no Negro ever summoned as juror, although state's Negro population 17% of its total population). The burden to prove a reasonable basis for the state's action then shifted to appellees Simon and Lefkowitz. But they offered no proof (see R. 182-3), so that on the record appellants are entitled to judgment, unless in lieu of such proof, the stipulated facts and the facts of which the court below took judicial notice (see R. 296-97) constitute such a reasonable basis. For the reasons stated in the briefs of appellants and appellee Nickerson, such facts are plainly insufficient to afford a reasonable basis for the New York method of legislative apportionment, assuming such a defense is available.

4. No defense of justification is available to the State. The City contends:

> (a) The New York method of legislative apportionment is a *per se* violation of the Fourteenth Amendment; and, in any event,

Equal Protection Clause guarantees him in a state-wide election for its governor.

Gray v. *Sanders* holds the county-unit system of voting state-wide—which diluted the votes of the residents of the more populous counties—invalid under the Equal Protection Clause despite defendants' answer which alleged that the county-unit system was designed "to achieve a reasonable balance as between urban and rural electoral power." *Id.* at 370. *Gray* v. *Sanders* involved a state-wide vote for executive officers, but its holding must also apply to bar under any circumstances a county-unit system of voting for a legislative officer running in the state at large.

Gray v. *Sanders* states that the "inherent numerical inequality" of the electoral college required validation through inclusion in the Constitution and that, absent such validation, a state could not use "an analogous system" in a state-wide election, *Id.* at 378. The "inherent numerical inequality" of the electoral college is the same as that contained in the apportionment of members of Congress to the states, see U. S. Const. Art. II §1, par. 2. Does it not follow that this too required validation through inclusion in the Constitution? Absent such validation, a state cannot use a state-wide system for election of those who are to exercise its legislative power, if the apportionment of the members of the legislative body to the districts in the state contains "inherent numerical inequality." The individual's interest is the same as when he votes in a state-wide election: the protection of his right to participate on an equal basis with every other individual in choosing who is to exercise the power of state government.

In short, the state to the same extent is barred from showing a reasonable basis for departing from the principle

of equality of voting power in apportioning representatives in the state legislature. Any attempt by New York State to set up a geographical classification of voters which impairs the votes of a particular class of people in voting for the legislature must fall as an invidious discrimination in the enforcement of its fundamental law granting the right to vote. *Yick Wo* v. *Hopkins, supra; see Lassiter* v. *Northampton County Board of Elections, supra* at 50. If the State of New York chooses to protect a legitimate interest of the people of the less-populated counties of the state, it cannot do so by laws which are inconsistent with equality of voting power. *Gray* v. *Sanders, supra.*

5. **The protection for the interests of the people of the less-populated counties is otherwise adequate.** Despite the opinion below (R. 313), there is no basis for the conclusion that the population of the counties of New York State which now enjoy preferred status in voting for the legislature require such status in order to maintain "a proper diffusion of political initiative" in the state, *MacDougall* v. *Green, supra* at 284—in the sense of a proper political balance between their interests and the interests of the population of the class of counties which are now underrepresented in the legislature. Adequate means are available to the minority in making its political weight felt.

New York is a state in which either of the two major parties has a reasonable chance to win a state-wide election for governor. Its state-wide parties seek and require voter support from all parts of the state, rural as well as urban. Each major party represents an alliance of people who live in both of the geographic classifications established for each house by the New York method of legislative apportionment. In the case of the Republican Party, the predomi-

nantly Republican vote of upstate towns, villages and rural areas—roughly derived from the population of the areas now over-represented in the legislature—must be combined with at least a substantial minority Republican vote from the population of the areas now under-represented.* Contrast the political situation that might exist if there were only a "Country Party" and a "City Party," with the "Country Party" deriving significant voter support only

---

* Using the geographic classification established for each house by the New York method of apportionment, the total vote for governor in the last three elections, 1954, 1958 and 1962, can be analyzed as follows:

(a) Based on 1953 apportionment:

	Total vote	Dem.-Lib. percentage	Rep. percentage
1954 (Harriman, Dem.-Lib., elected)			
Senate:			
6% or more counties	2,505,951	63.4%	36.6%
All other counties	2,604,400	37.3%	62.7%
Assembly:			
Third-class counties	3,844,569	55 %	45 %
All other counties	1,265,782	35 %	65 %
1958 (Rockefeller, Rep., elected)			
Senate:			
6% or more counties	2,644,608	55 %	45 %
All other counties	3,036,216	36 %	64 %
Assembly:			
Third-class counties	4,287,326	49 %	51 %
All other counties	1,393,498	34 %	66 %

(b) Based on pending apportionment:

1962 (Rockefeller, Rep., elected)			
Senate:			
6% or more counties	3,134,904	52 %	48 %
All other counties	2,499,101	37 %	63 %
Assembly:			
Third-class counties	4,431,207	48 %	52 %
All other counties	1,202,798	35 %	65 %

Sources: For 1954: 1956 N. Y. LEGIS. MAN. 1032-33 (1956)
For 1958: 1959 N. Y. LEGIS. MAN. 1060-61 (1959)
For 1962: N. Y. DEP'T STATE, GOVERNOR AND LIEUTENANT GOVERNOR—VOTE CAST ON NOVEMBER 6, 1962 (1963).

from the less-populated areas, and thus unable to win a state-wide election for governor.*

Thus "a proper diffusion of political initiative" would still be maintained, assuming the legislature were apportioned in a manner consistent with equality of voting power. A substantial state-wide victory for the Republican Party candidate for governor would still be likely to elect a Republican majority in both houses of the legislature. In that event, the machinery of government, the executive and the legislature, would still be controlled by a political party responsive to the interests of the population of the areas which are now over-represented in the legislature.

Other arguments to justify preferred voting status for the less-populated areas have even less merit.

The natural resources of the less-populated areas would seem to involve various interests common to different groups of people throughout the entire state—for example, the interest in economic exploitation, sound or unsound, and the interest in conservation for other purposes.

Similarly, many of the urgent problems of our day are not limited to the large metropolitan centers: for example, the problems of the non-white population, the problems of low-income families, inadequate housing and the increasing incidence of crime.**

---

* For a discussion of state politics generally, see KEY, POLITICS, PARTIES, AND PRESSURE GROUPS (3d ed. 1952); TRUMAN; THE GOVERNMENTAL PROCESS (1951).

** See, *e.g.*, UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, UNITED STATES CENSUS OF POPULATION, 1960 NEW YORK DETAILED CHARACTERISTICS Tables 133 and 134 (distribution of non-white population and per capita income); NEW YORK STATE DEPARTMENT OF COMMERCE, RESEARCH BULLETIN No. 3 10-11 (1962) (per capita income); NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, STATISTICAL SUMMARY OF PROGRAMS 3, 55, 58 (1962); *id.*, ANNUAL REPORT 1960-61 16-17 (1961) (distribution of stated-aided housing and urban renewal projects); NEW YORK STATE DEPARTMENT OF CORRECTION, RELEASE dated July 12, 1963, Table I, Arrests for Major Crimes, January-March 1963 and Calendar Year 1962.

The foregoing discussion highlights the danger of *a priori* assumptions about protection of the interests of the less-populated areas of New York State as a basis for departing from full equality of representation in the legislature—assuming that such a departure would ever be permissible under the Fourteenth Amendment.

B. The New York Method of Legislative Apportionment Results in an Arbitrary Impairment of Votes

Assuming *arguendo* that elements of arbitrariness or irrationality must be found in the New York method of legislative apportionment to invalidate it under the Fourteenth Amendment, such elements exist, comparable to those discussed by Mr. Justice CLARK in *Baker* v. *Carr*.

In New York State a "wide vertical disparity" exists between the representation of the more populous and less populous counties of the state, in both houses of the legislature. See pp. 9-12, *supra*. On its face, according to Mr. Justice CLARK, such a disparity constitutes a violation of the Equal Protection Clause unless a state of facts reasonably can be conceived to justify it. *Baker* v. *Carr*, *supra* at 253, 256.

An examination of the 1953 apportionment and the pending apportionment based on the 1960 census, however, discloses no reasonable justification for the New York method of legislative apportionment.

1. The 1894 method of legislative apportionment is obsolete. It is arbitrary and irrational to continue to apply in the second half of the Twentieth Century a method of legislative apportionment devised in 1894—69 years ago—when it consistently produces the results noted: a substantial impairment of the majority's voting power in both houses of the legislature. Even assuming that a "rational"

basis once existed, it has disappeared because of changed circumstances.

The population of New York State has increased from less than 6 million in 1894 to over 16 million in 1960. The figure which determines a county's classification in a senate apportionment, 6% of the state's population, was about 350,000 in 1894; today it is almost 1,000,000. An assembly ratio (population of the state÷150) was 38,606 in 1894; it is now 108,272. Today the population of New York City alone far exceeds the total population of the state in 1894.

Since 1894 the state's population pattern has developed in a manner not foreseen by the 1894 convention. The convention foresaw that New York and Kings would be the two counties of maximum population,* and that either of these counties might grow in population in proportion to the rest of the state at such a rate that either one would have more than one-third of all the senators (in the 1894 apportionment New York had 24% and Kings 14%) and that together they would have more than one-half of all the senators. To prevent this, the convention wrote two prohibitions into the constitution. See N. Y. Const. Art. III §4, par. 2; see pp. 42-43, *supra*.

What has actually occurred, however, was plainly not foreseen by the 1894 convention. In subsequent apportionments the populations of Kings County and New York County (plus Bronx since 1914) increased only slightly in proportion to the rest of the state, at nothing like the rate

* In 1894 the City of New York comprised only New York County (the island of Manhattan plus part of present Bronx County). Kings County was the City of Brooklyn. The Greater New York Charter, N. Y. Laws 1897, c. 378, united the City and County of New York, the City of Brooklyn and the County of Kings, Richmond County and part of what was then Queens County: the City of Long Island City, the Towns of Newtown, Flushing and Jamaica, and part of the Town of Hempstead.

necessary to cause either of the constitutional prohibitions to apply. And, according to the federal census, between 1950 and 1960 the populations of these three counties actually declined, while the population of the rest of the state increased. Today the percentage of the state's population concentrated in New York, Bronx and Kings counties (34%) is well below what it was in 1894 (40%).*

Moreover, the counties of maximum population now include Queens and Nassau, a development certainly not foreseen by the 1894 convention. At that time Queens, including the territory which in 1899 became Nassau, had a population of only 123,974. The present extreme dilution of popular representation caused by the rule requiring an increase in the total number of senators is attributable to the phenomenal population growth of these two counties, Queens beginning after the First World War and Nassau after World War II. See 1962-63 N. Y. LEGIS. MAN. 1079-80 (1962); see pp. 26-27, *supra*.

	Population		
1894				
	Kings	868,983		
	New York	1,423,984		
		2,292,967		
	State	5,790,865	=	40%
1960				
	Kings	2,518,510		
	New York	1,584,069		
	Bronx	1,368,207		
		5,470,786		
	State	16,240,786	=	34%

Population trends not foreseeable in 1894 have caused the disparity between the populations of the least populous counties and the most populous counties to increase steadily. As a consequence, use of the method of legislative apportionment required by the 1894 constitution has produced a dilution of the representation of the most populous counties and an inflation of the representation of the minority far in excess of what was reasonably foreseeable at the time this method was adopted.

In 1894 the population of New York State was much more evenly distributed among the counties. In the 1894 apportionment, for example, the first-class (one assemblyman) counties were apportioned only two assembly seats more than was commensurate with their share of the state's population, because only 21 had less than one ratio—the state-wide average population per assembly district—while 15 had unrepresented population remainders, that is, remainders less than one-half a ratio. In the pending apportionment, there will be 38 one-assemblyman counties with less than one ratio of population, and only 6 with unrepresented population remainders. As a result, the first-class counties as a group will receive 18 more assemblymen than they would be entitled to receive on the basis of population (see R. 235).

Since 1894 the average population of the first-class counties—those with only one assemblyman—has steadily declined in comparison to the average population per assemblyman in the third-class counties:

Apportionment	Average Population of Assembly Districts of Third Class Counties	Average Population of First Class Counties (one Assemblyman)	Difference
1894	40,733	36,010	4,723
1907	50,657	41,602	9,055
1917	60,998	41,424	19,574
1943	97,366	52,187	45,179
1953	112,477	57,648	54,829
pending	126,649	62,765	63,884

Source: WELLS, LEGISLATIVE REPRESENTATION IN NEW YORK STATE 12 (1963 ed.).

In the 1894 apportionment the third-class counties (those with 1⅓% or more of the state's population) had 68% of the state's population and 64% of the assembly seats. In the pending apportionment they will have 80% of the state's population, but only 67% of the Assembly.

In the 1894 apportionment the counties with 6% or more of the state's population had 40% of the state's population and 38% of the senate seats. In the pending apportionment, they will have 59% of the state's population, but only 46% of the senate seats.

Given the present population distribution in the state and the likely future trends,* these results cannot reasonably be attributed to a "rational" system of legislative apportionment.

Finally, to stress the obvious, the constitution of 1894 was adopted before the advent of major improvements in transportation and communication, which undermine what-

* See REGIONAL PLAN ASSOCIATION, BULLETIN 100, SPREAD CITY 34-36 (1962).

ever validity there may once have been in the arguments at the 1894 convention in favor of limiting the size of legislative districts. Super-highways, the airplane and the helicopter, television, radio and business machines—all unheard of in 1894—are available today for campaigning and serving the electorate.

2. The New York method of legislative apportionment produces arbitrary and irrational variations between representation and population. Like the Tennessee apportionment, the New York apportionment produces arbitrary and irrational variations between legislative representation and population.*

In the Assembly:

(a) *Counties of equivalent population with different representation.* In the Assembly, several one-assemblyman counties have populations far above the state-wide average yet receive the same representation as counties with a much smaller population. At the same time, other counties with slightly larger populations receive *two* assemblymen, because they happen to be counties of the second class (populations between 1% and 1⅓% of the state's population).

In the pending apportionment, for example, the state-wide average will be 108,272 per assemblyman. Four first-class counties have populations well above this average:

---

* Appendix B shows the "total representation" of the counties of New York State, in accordance with the method used by Mr. Justice CLARK in *Baker* v. *Carr*, *see* 369 U. S. at 255, in the pending apportionment based on the 1960 census figures.

County	Population
Schenectady	150,688
Chautauqua	143,832
Rensselaer	140,933
Rockland	131,834

Each of these counties, however, will be apportioned only one assemblyman. Yet in the same apportionment 26 other counties each will receive one assemblyman, although none has a population over 57,000, and the least populous, Schuyler has a population of only 14,974. Furthermore, three other counties, each with a larger but equivalent population, will receive two assemblymen apiece as counties of the second class:

County	Population	Average Population per Assemblyman
Broome	209,598	104,799
Orange	179,874	89,937
Dutchess	171,396	85,698

(b) *The rule prohibiting an assembly district which crosses a senate district boundary.* Arbitrary and irrational variations between voting representation and population also result from a mandatory rule in the constitution:

> "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, exclud-

ing aliens, as the case may require." N. Y. CONST. Art. III §5, par. 4.

In substance, the constitution prohibits the simple expedient of drawing assembly district lines within a county so as to create districts of equal population, without regard to the senate district lines within the county. As a result, in the 1953 apportionment assembly districts within the counties of Kings, New York, Queens, Erie and Onondaga varied substantially in population (see R. 236). Two of Onondaga's three assembly districts each had a population of about 84,000, while one assembly district had the same boundaries as one of the two senate districts in the county. This district had a population of 167,226, double that of each other two, making it by far the most populous in the state. Elsewhere the population variations between assembly districts in the same county were about 50,000 in the 1953 apportionment:

County	Population per Assembly District*	
Kings	10 districts:	144,177
	12 districts:	96,118
New York	4 districts:	149,643
	12 districts:	99,762
Queens	4 districts:	148,421
	9 districts:	98,947
Erie	2 districts:	146,417
	6 districts:	97,611

* Population in a particular district will vary slightly because of the rule against dividing a block.

In the pending apportionment, this provision will result in creation of assembly districts of disparate population within seven counties, Bronx, Kings, Queens, Erie, Monroe, Nassau and Suffolk, with some districts having popula-

tions ranging from about 142,000 to 190,000—far above the state-wide average of about 108,000 per district (see R. 237). Monroe will show the extreme variance. It will have one assembly district with the same boundaries as a senate district and a population of about 190,000, twice the population of each of its other four districts—merely because 5, the number of assemblymen Monroe will have, is not divisible by 3, the number of its senators. In the other counties that will be affected by this rule*, the range of population variation between assembly districts in the same county will be 34,000 to 60,000.**

(c) *The inconsistent combination of Fulton and Hamilton counties into one assembly district.* A final example

---

* Like Monroe, Suffolk will also be apportioned 5 assemblymen and 3 senators. However, its most populous district will be reduced because of the rules against dividing towns. N. Y. CONST. Art. III § 4, par. 1, § 5, par. 4.

**

County	Population per Assembly District	
Bronx	4 districts:	171,026
	6 districts:	114,017
Kings	4 districts:	179,894
	15 districts:	119,929
Queens	4 districts:	173,308
	9 districts:	115,539
Erie	2 districts:	173,275
	6 districts:	115,516
Nassau	6 districts:	141,756
	4 districts:	106,317

Note: Population of a particular district will vary slightly because of the rule against dividing a block. Population of Nassau County's districts will also vary because of the rules against dividing towns.

from the Assembly of counties with equivalent populations but different representation is the arbitrary exception of Fulton and Hamilton counties from the rule which requires that each county be apportioned one assemblyman, regardless of its population. The constitution directs that Fulton and Hamilton counties be combined into one assembly district, and in the 1953 apportionment one assemblyman was apportioned to this district for a total population of 54,190 (Fulton 50,135; Hamilton 4,055). Yet in the same apportionment there were 25 counties each of which received one assemblyman apiece although each had a population less than that of Fulton and Hamilton combined, and combinations of several of them would have produced assembly districts of equivalent populations. For example, the following sparsely-populated counties are contiguous and could have been combined into single districts with populations less than the state-wide average per district (95,000):

County	Population per County	Total Population of Hypothetical Assembly District
Schuyler	14,066	
Seneca	28,254	59,781
Yates	17,461	
(or any 2 of them)		
Greene	28,082	50,300
Schoharie	22,218	
Essex	34,542	73,219
Warren	38,677	
Chenango	38,741	75,527
Cortland	36,786	
Livingston	39,692	75,750
Wyoming	32,275	
Delaware	43,863	83,222
Sullivan	39,359	

The same is true in the pending apportionment. Twenty-four one-assemblyman counties will each have a population less than that of Fulton and Hamilton combined and the same combinations of counties can be made, all to produce a population per district well below the state-wide average and in three instances, less than the population of the Fulton-Hamilton district.

In the Senate:

As already pointed out (see Subhead *A*, p. 39 *et seq.* *supra*), the method of apportioning the Senate is "rational" only in the sense that it shows a deliberate pattern to reduce the popular representation of the class of counties which each have 6% or more of the state's population and to increase the representation of the population of the remaining counties. Senators are apportioned to the two classes of counties in different ways, with the "full-ratio" rule and the rule requiring an increase in the number of senators providing the means of discriminating against popular representation of the counties in the 6%-or-more class.

This intentional method of discriminatory apportionment, however, contains a number of arbitrary and irrational elements.

(a) *Variation in representation among urban counties.* The two-class method of apportioning the Senate does not result in a "rational" pattern whereby the representation of the predominantly urban counties of the state is reduced in order to give a greater voice to the sparsely-populated predominantly rural counties. Instead, the limitation on representation of the counties with 6% or more of the state's

population simply means that a few heavily-populated urban counties, most of them within the City of New York, are discriminated against in favor of the other predominantly urban counties, as well as all the predominantly rural counties. The separate classification for the 6% or more counties cannot be explained as a rational attempt to adjust the urban-rural population imbalance.

The most authoritative classification to identify by political unit boundaries the major urban centers throughout the United States is the "Standard Metropolitan Statistical Areas" (SMSA's) established by the United States Bureau of the Budget (see R. 41-45). An SMSA is a county or group of contiguous counties which satisfies detailed criteria designed to distinguish predominantly urban areas from predominantly rural areas. *Ibid.* Using these criteria, the 1960 federal census identifies seven areas in New York State as SMSA's (R. 48):

SMSA	Counties
1. *New York* population: 10,260,557	
City of New York:	
	Bronx
	Kings
	New York
	Queens
	Richmond
outside City of New York:	
	Nassau
	Rockland
	Suffolk
	Westchester
2. *Albany—Schenectady—Troy* population: 648,843	
	Albany
	Rensselaer
	Saratoga
	Schenectady
3. *Utica—Rome* population: 324,548	
	Herkimer
	Oneida
4. *Syracuse* population: 554,388	
	Madison
	Onondaga
	Oswego
5. *Binghamton* population: 209,597	
	Broome
6. *Rochester* population: 571,029	
	Monroe
7. *Buffalo* population: 1,275,325	
	Erie
	Niagara

Thus 22 of the state's 62 counties are included within its seven SMSA's and constitute the urban counties of the state, by the most authoritative classification available. In

the pending apportionment, however, only six of these 22 will be in the class of counties which each have 6% or more of the state's population: Bronx, Kings, New York, Queens, Nassau and Erie. Five of these—all but Erie—are within the New York SMSA. The remaining 16 urban counties are apportioned senate representation as members of the same favored class of counties which includes all the predominantly rural counties.*

Using the SMSA classification, the senate representation to be apportioned to the 22 urban counties varies widely, depending primarily on whether the county has 6% or more of the state's population. For example, Erie, Monroe, Nassau, Suffolk and Westchester, all urban counties, will each be apportioned three senators in the pending apportionment:

County	Population	Average Population per Senator
Nassau	1,275,801	425,267
Erie	1,039,648	346,549
Westchester	782,179	260,726
Suffolk	650,112	216,704
Monroe	571,029	190,343

State-wide average per senator = 284,926

* A closer correlation exists in the Assembly between the 22 urban counties in the SMSA classification and the third-class counties, whose popular representation is limited by the method of assembly apportionment. Based on the 1960 census the 22 urban counties include all 14 third-class counties plus one second-class county (Broome) and seven first-class counties (Herkimer, Madison, Oswego, Rensselaer, Rockland, Saratoga and Schenectady). This closer correlation, of course, is attributable to the lower population requirement for a third-class county in the Assembly: 1⅓% of the state's population, against 6% in the Senate. This is still far from a rational correlation between urban character and population.

The only reason why two of them, Erie and Nassau, have much larger populations per senator is that they happen to fall into the class of counties which each have 6% or more of the state's population.

To reiterate, this discrimination between the two classes of counties for senate apportionment purposes is not based on whether a county is predominantly urban or rural in character, or on other arguably valid factors. Instead, the discrimination is mechanical: It depends solely on the number of people residing in the county, as a percentage of the state's population—a percentage originally determined simply in order to limit the representation of New York and Kings counties.

A predominantly urban county like Nassau was not under-represented in the Senate until its population increased to 6% of the state's total. At that point it becomes the most under-represented county in the state. In the 1953 apportionment its average population per senate district was 218,563 against the state-wide average of 244,887; in the pending apportionment its average population per senate district will be 425,267 against the state-wide average of 284,926. Between 1950 and 1960 Nassau's population almost doubled--from 655,690 to 1,275,801--*yet its senate representation will not increase at all.*

In short, the sole criterion for discriminating against the 6%-or-more counties in senate representation is an arbitrary population measure, completely unrelated to any consideration which arguably might justify the discrimination.

(b) *Increasing the representation of the less populated counties as the more populated counties increase in popu-*

lation. An arbitrary and irrational rule in the New York constitution is that which requires that in each apportionment the total number of senators be increased to the extent that any county having 6% or more of the state's population becomes entitled to a greater number of senators than it had in the 1894 apportionment (see pp. 24-27, *supra*), with all the increase to be apportioned to the counties which have less than 6% of the state's population.

In the first place, the arithmetic result is that the comparative voting power of the population of the counties with 6% or more of the state's population *decreases* as their share of the state's population *increases*, and conversely, the comparative voting power of the population of the remaining counties *increases* as their share of the state's population *decreases*. In the apportionment of 1894 the two 6%-or-more counties, Kings and New York, had 40% of the state's population and 38% (19) of the 50 seats in the Senate. In subsequent apportionments the gap between population and representation has steadily widened. By the 1953 apportionment the five 6%-or-more counties had 57% of the state's population and only 47% (27) of the 58 senate seats. In the pending apportionment, the six 6%-or-more counties have 59% of the population—and will be apportioned only 46% (26) of a 57-member Senate. Despite an increase of almost 1,400,000 in the total population of the 6%-or-more counties between 1950 and 1960, their representation in the Senate will *decrease*, both in actual number of seats and percentage of the state total.

In the second place, there is nothing sacred about the year 1894. It is irrational to impose meaningless standards, even though they derive from the 1894 apportionment. The distribution of population throughout New York State was

radically different in 1894 from what it is today. The population increase from less than 6,000,000 to over 16,000,000 has inevitably resulted in a steady increase in the number of 6%-or-more counties.

The rule for increasing the number of senators is arbitrary and irrational and is nothing more than a "grandfather clause," a device whereby a temporary majority in 1894 has sought, so far successfully, to perpetuate its control of the Senate indefinitely. *Cf. Lane* v. *Wilson*, 307 U. S. 268 (1939); *Guinn* v. *United States*, 238 U. S. 347 (1915).

The justifications for the rule advanced in Judge Levet's opinion have no merit. Said Judge Levet: "Unless senatorial districts are to be subject to repeated and relatively frequent readjustments, some practicable means of addition of more senators must be provided" (R. 307). In fact, senate districts *have* been subject to "repeated and relatively frequent readjustments." This has been due primarily to population changes within the state and to the steady increase in the total number of senators, with a corresponding decrease in the size of the second ratio of population relative to the state's total population. Regrouping of the counties in the multi-county senate districts has been compelled in each apportionment in order to give such districts the equality of population required by the constitution. Only four of the original 50 senate districts of 1894 still have the same boundaries.* In the first apportionment after 1894—in 1907—the boundaries of 16 of the

* Columbia, Dutchess and Putnam Counties (24th Senate District in 1894, now 35th S.D.); Albany County (29th S.D. in 1894; now 30th S.D.); Oneida County (34th S.D. in 1894; now 42d); and Chautauqua and Cattaraugus counties (50th S.D. in 1894; now 55th).

28 second-ratio senate districts were changed. A substantial number of second-ratio senate districts have been shifted on each subsequent apportionment. In the 1953 apportionment 12 of 31 were changed.

To illustrate, every one of the predominantly urban counties in the seven standard metropolitan statistical areas in the state (see pp. 64-65, *supra*) which does not have at least one senator of its own, is linked with a predominantly rural county or counties, rather than with another urban county in the same SMSA. The Albany-Schenectady-Troy SMSA consists of four urban counties: Albany, Rensselaer, Saratoga and Schenectady. In the 1953 apportionment, Albany received a senator of its own, Rensselaer was in a senate district with Washington County, Saratoga in a district with Essex and Warren, and Schenectady in a district with Schoharie, all predominantly rural counties. In the 1943 apportionment, the combinations of counties were entirely different: Rensselaer and Saratoga were in one district, Schenectady was in a district with Montgomery County and Essex, Warren and Washington were joined with Clinton.

Another justification for the rule requiring an increase in the number of senators is stated in the opinion below to be "to prevent counties having three or more senators from obtaining a larger number of senators at the expense of the counties of the State not having three or more senators," this statement being quoted from *Matter of Dowling, supra* at 51, where this was said to be "the one, and only one purpose" of the rule (R. 307). The City agrees that this is the sole purpose of the rule, but it is no justification for it under the Fourteenth Amendment. Moreover, as already pointed out, the rule in operation does much more.

The proportionate representation of the counties with less than 6% (three constitutional ratios) of the state's population has not remained constant since 1894. It has increased steadily, an increase accelerated by the failure to reduce the total number of senators when a county having 6% or more of the state's population has decreased in representation since the 1894 apportionment. See p. 27, *supra*.

Finally the opinion below states that the rule was "designed to effectuate administration of the senatorial electorate, and designed to meet accessibility, and practicability" (R. 307). There is nothing in the record to support this statement, assuming it were a justification. The record amply supports the statement of the New York Court of Appeals in *Matter of Dowling* that the one and only purpose of the rule was in effect to discriminate against senate representation of the class of counties, each of which has 6% or more of the state's population.

(c) *The random impact of the "full-ratio" rule.* The "full-ratio" rule bars a county which has 6% or more of the state's population from receiving an additional senator for any remainder in population which is less than a full constitutional ratio, however large this remainder may be (see pp. 22-24, *supra*).

The rule is irrational because its impact in an apportionment of the Senate is completely accidental and arbitrary.

As previously discussed, the effect of the rule in reducing the senate representation of a 6%-or-more county can be severe. This is due to both the rule itself and the fact that the ratio of population used in apportioning the Senate is artificially inflated by the rule requiring

an increase in the number of senators: the constitutional ratio, based on a 50-seat senate, is substantially greater than the ratio determined by dividing the state's population by the actual number of senators to be apportioned. The severity of the rule's impact is also due to the fact that the population of New York State is so large today. A constitutional ratio of population in turn is large (324,816 based on 1960 census), so that a rule which bars representation to population remainders can and does affect a great many people.

Theoretically, all the 6%-or-more counties can find the senate representation very substantially limited by the "full-ratio" rule, or it can have no adverse effect on their representation. The impact of the rule depends entirely on what the population figures may show in a particular census. If a 6%-or-more county happens to end up with a remainder of population just under a full constitutional ratio, as happened to Bronx County in the 1953 apportionment and as will happen to Nassau County and New York County in the pending apportionment, the legislature has no discretion to adjust this arbitrary and unfair result. The constitution recognizes no exception. In the case of Nassau, for example, its unrepresented remainder of 301,353 will be substantially greater than the state-wide average population per senator (284, 926) and almost double the population of the probable least populous senate district. Yet in apportioning senators to Nassau the legislature's hands will be tied; no discretion exists to correct the inequity. By contrast, the legislature has discretion—and exercises it—in apportioning senators to the remaining counties using the second ratio of population. In both the 1943 and 1953 apportionments, neither Broome nor Richmond had a full second

ratio of population, although in each case the population of the county almost reached that figure. Nevertheless, each was apportioned a senator of its own. Similarly, in the 1953 apportionment Onondaga received two senators for 1.71 second ratios of population; in the pending apportionment Monroe will receive three senators for its 2.63 second ratios.

Finally, nothing except the law of probabilities prevents the "full-ratio" rule from having a severe impact on the popular representation of every one of the counties with 6% or more of the state's population in any particular apportionment. In the pending apportionment, for example, a population shift of a mere 68,944 (less than ½ of 1% of the state total) from Bronx to Queens would have caused the "full-ratio" rule to deprive both of them of a senator, as well as Kings, New York and Nassau, each of which already must be denied an additional senator.

In short—assuming irrationality must be shown—in a matter which so vitally concerns the rights of an individual, his right to vote, it is irrational for a state to employ a rule to limit popular representation in voting for the legislature which is not reasonably related to this objective, but which instead operates and can operate in an arbitrary and capricious manner.

POINT II

The majority has no practical opportunity to change the New York method of legislative apportionment.

In *Baker* v. *Carr* Mr. Justice CLARK adopted a threshold test for determining whether a Court should intervene to correct an invidious discrimination resulting from legislative apportionment: whether or not the majority of the people have practical opportunities to correct the situation by exerting their political weight at the polls. *See Baker* v. *Carr, supra* at 258-59. He concluded that the majority of the voters of Tennessee had no practical opportunity to correct the situation. The City contends that the majority of the people of New York are in the same helpless position.

Like Tennessee, New York has no procedure for amending the state constitution by initiative and referendum. Recurrent efforts to amend the constitution to provide this procedure have all been in vain. See, *e.g.*, NEW YORK STATE CONSTITUTIONAL CONVENTION COMMITTEE, AMENDMENTS PROPOSED TO NEW YORK CONSTITUTION 1895-1937 1224-28 (1938), and the following bills introduced in the 1963 session of the state legislature, all of which died in committee: S. Int. No. 763, 1136; Ass. Int. No. 1783, 2081.

Like Tennessee, procedures exist in New York for taking corrective action, but these procedures must be initiated by the minority-dominated legislature. The votes of the incumbent legislators, as Mr. Justice CLARK recognized, can be expected to prevent any change in the status quo. *Baker* v. *Carr, supra* at 259.

The New York constitution, which prescribes the method of legislative apportionment, can be amended in only two ways, one of which is by vote of the people at general election *after* the proposed amendment has been approved by a majority of the members of each house of the legislature at two successive regular sessions, a general election of the legislature having intervened. See N. Y. Const. Art. XIX §1. This way patently offers no practical opportunity for the majority to effect a change in legislative apportionment, and in fact has not in New York. In 1955, for example, the then governor, Averell Harriman, in his first annual message to the legislature recommended the initiation of a constitutional amendment to "remedy the injustices of our present apportionment system," 1955 N. Y. Sess. Laws 1577-78. He repeated this recommendation in each succeeding year of his administration. See 1956 N. Y. Sess. Laws 1524 (annual message), 1632-33 (special message); 1957 N. Y. Sess. Laws 1730 (annual message); 1958 N. Y. Sess. Laws 1819-20 (annual message). The legislature did not act, despite the fact that as far back as 1950 a report to its joint legislative committee on reapportionment had concluded that: "The cities, particularly the City of New York, do not have equitable representation in either House" and that the present method of obtaining the ratio of population for apportioning senators is "unfair to urban districts." See *Preliminary Report to the Joint Legislative Committee on Reapportionment*, N. Y. Legis. Doc. No. 31 44, 12 (1950).

Apart from action which must be initiated by the legislature, the only way the New York constitution can be amended is by vote of the people *after* the proposed amend-

ment has been adopted by a constitutional convention, N. Y. Const. Art. XIX § 2; *cf. id.* § 3. The only way a convention can be held is if a majority of the people voting thereon vote "yes" on the question "shall there be a convention to revise the constitution and amend the same?" *Id.* § 2. This referendum in turn can be presented to the voters in only two ways:

> (1) at such times as the legislature may by law provide—again not a practical opportunity for the majority of the people in a minority-dominated legislature; and
>
> (2) *Once every twenty years at a general election, the next time being in 1977.*

The latter alternative—an automatic referendum every 20 years—offers the only factual distinction between the position of the majority in Tennessee and in New York.

The court below seized on this distinction and held that the majority has a political remedy available to it, because this automatic referendum procedure exists and because on November 5, 1957, the last time the referendum was held, a majority of those voting on the question voted "no" (See R. 304, 311-12, 314; *cf.* R. 296-97).

At the outset, it is axiomatic that a majority of the people of a state, however large that majority may be, cannot by approving a state's action render it immune from attack under the Fourteenth Amendment, if such action otherwise violates an individual's rights. And the City does not concede that persuasive reasons would exist for modifying or withholding judicial action, even if an initiative and referendum procedure for amending the state constitution

were available to the majority at reasonably frequent intervals.

Assuming *arguendo* this were the case, however, the only procedure which does exist—the automatic vote once every twenty years on whether to hold a convention—plainly falls far short of any reasonable standard for a political remedy available to the majority.

Since there is no general initiative and referendum procedure in New York, the majority has no control of the question to be voted on. The question which is voted on—whether or not to hold a convention—if voted on favorably, represents only the first step. A vote to hold a convention is no assurance that it will act, even if there were no impairment of votes in electing convention delegates. And the majority is assured of an opportunity to vote only once every 20 years.

Despite Judge Levet's opinion, the 1957 vote against holding a convention cannot reasonably be interpreted as an expression of the majority on "the issue of apportionment" (R. 311). The question was: "Shall there be a convention to revise the constitution and amend the same?" As worded, the question has no relation whatsoever to legislative apportionment. Judge Levet's opinion leaped this hurdle by equating the referendum on holding the convention, despite its plain language, with a referendum on the issue of apportionment. Judge Levet concluded that the vote was "heralded as an issue of apportionment" (*ibid*), and, therefore, the vote against holding the convention was in effect a vote approving the present method of apportionment, or, in the alternative, "the majority chose not to

convene a constitutional convention" (*ibid*), and thus did not avail itself of the opportunity to disapprove the present method of apportionment by voting "yes" on the question.

Judge Levet based this conclusion on the 1957 vote on the question. This vote was "yes" 1,242,568 (23.8%), "no" 1,368,063 (26.2%), *blank and void 2,608,204 (49.96%)*—a statistic not mentioned in the opinion. See 1958 N. Y. LEGIS. MAN. 1077-78 (1958). Just under one-half the voters who went to the polls expressed no opinion on the question; those who expressed no opinion far outnumbered those who voted "no". This may in part have resulted from voter confusion: included on the ballot with the question of holding the convention were six proposed amendments to the constitution. (See Appendix C, a facsimile of the face of the voting machine used in a part of New York County on November 5, 1957.) Moreover, the voters who voted in the general election of 1957 represented only 81% of the voters registered to vote, see *id.* at 1056, the low turnout probably being due to the fact that no state-wide office was contested. By contrast, 93% of registered voters voted for president in 1956. See 1957 N. Y. LEGIS. MAN. 1032-33, 1042-43 (1957). In short, the 1957 vote on whether to hold a convention is not a reasonable basis for the conclusion that the majority exercised a choice.

Furthermore, the vote was not the equivalent of a referendum on the issue of apportionment, despite Judge Levet's conclusion that it was "heralded as an issue of apportionment" (R. 311). The only "herald" identified by Judge Levet is the then governor of the state, Averell Harriman, on the basis of reports in the *New York Times*

of three public statements which the governor made in September and October of 1957 (See R. 311-12).

It would seem beyond dispute that no weight should be given to anyone's opinion, however authoritative, as to the issue actually presented by a question being voted on in an election, at least when the question as worded has a plain meaning and when the interpretation offered bears no reasonable relationship to the plain meaning of the question. *A fortiori* this must be true when the issue is the right of a voter to equality of voting power, and the argument made to justify the impairment of his vote is that a majority has approved—or has had an opportunity to disapprove—the method of legislative apportionment which produced the impairment. *See Thigpen* v. *Meyers*, 211 F. Supp. 826, 832 (W. D. Wash. 1962), *appeal pending sub nom. Meyers* v. *Thigpen*, No. 381, Oct. Term, 1963; *Davis* v. *Synhorst*, 217 F. Supp. 492, 501 (S.D. Iowa 1963).

In addition, the public statements of Governor Harriman cited by Judge Levet do not support his conclusion. Only three are cited:

(1) The first was in a speech at a luncheon in a New York City hotel attended by about 1,000 college instructors and experts in government. N. Y. Times, Sept. 7, 1957, p. 1, col. 8. The luncheon was a part of the program of the annual meeting of the American Political Science Association. Governor Harriman urged residents of the state to vote in November for a convention to revise the state constitution, the headline of the article being "Harriman Urges Charter Reform." To quote from the *Times'* report:

> "The most important reform needed, the Governor said, is to elect one house of the Legislature on the basis of population to give big cities fuller representation."

While "the most important reform" needed was a change in the method of apportioning one house, Governor Harriman mentioned others as well:

> " 'Among the amendments needed to give the people a greater voice in their government,' Mr. Harriman said, 'are a provision for initiating constitutional amendments by public petition and a direct primary for nomination of statewide officers. * * * ' "

(2) The second statement cited by Judge Levet was in an article discussing the report of a conference on metropolitan area problems. See N. Y. Times, Sept. 24, 1957, p. 29, col. 1. The reference to Governor Harriman's views on the convention reads in full as follows:

> "The full conference accepted the view made public on Saturday by Governor Harriman that city and suburban dwellers were not adequately represented in the legislatures of most states. The conference, agreeing this was because reapportionment lagged behind population shifts, called for fairer systems of representation.
>
> "*Governor Harriman said later that if New York voters indicated their desire, in this year's referendum, for a Constitutional Convention, he would make reapportionment an item of the convention.*
>
> "Mr. Harriman favors electing one house of the Legislature strictly on a population basis with seats on the other chamber filled on a geographical district basis as heretofore." (emphasis added)

Chairman, *id.* Oct. 13, 1957, p. 47, col. 1, and Robert K. Christenberry, then the Republican candidate for Mayor of New York City, *id.* October 20, 1957, p. 69, col. 4. Both the Speaker of the Assembly, Oswald D. Heck, and the Majority Leader of the Senate, Walter J. Mahoney, opposed holding a convention, Speaker Heck on the ground that any necessary changes could be made as well or better by the legislature. See *id.* Sept. 21, 1957, p. 11, col. 7 (Heck); Sept. 19, 1957, p. 19, col. 2-3 (Mahoney). According to the *Times*, Speaker Heck's opposition reflected, in part, fears of upstate conservationists that a convention might bring about relaxation of constitutional provisions relating to the state's forest preserve.

Other public figures supported a convention on grounds unrelated to apportionment. Senator Jacob K. Javits stated:

> "• • • a convention could act very effectively in simplifying the constitution and in dealing with the question of court reform, which is an extremely important question." *Id.* Nov. 1, 1957, p. 16, col. 2.

The deans of all ten New York State law schools endorsed the convention as a method of revising the constitution that "permits the kind of study, debate and action which considers the entire Constitution and the inter-relation of its parts as political, social and economic conditions change," *id.* Oct. 10, 1957, p. 36, col. 7. They expressed the hope that it would consider "the possibility of simplification of a very unwieldy and bulky document." *Ibid.* Harold Reigelman, Republican candidate for Mayor of New York City in 1953, also urged support:

> "Opposition to a convention, he added, 'is based upon a distrust of the judgment of the people and

> the fear by some political or private interests that the exercise of that judgment may cost them some controversial constitutional advantage they presently enjoy.'" *Id.* Nov. 1, 1957, p. 16, col. 3.

Thomas J. Curran, New York County Republican leader, joined with Mr. Reigelman in urging a "yes" vote. *Id.* p. 1, col. 1.

A number of non-political organizations took positions for or against, none of them giving apportionment as a reason. These included:

Against: Uniformed Firemen's Association, *id.* Oct. 31, 1957, p. 64, col. 6; New York Real Estate Board, *id.* Nov. 1, 1957, p. 16, col. 2; New York Chamber of Commerce, *id.* Sept. 30, 1957, p. 17, col. 1.

For: Citizens Union, *ibid;* Brooklyn Bar Association, *id.* Oct. 28, 1957, p. 25, col. 3; Automobile Club of New York, *id.* Oct. 1, 1957, p. 36, col. 8.

Finally, Judge Levet stated that if a convention had been held, the majority would have been afforded a practical opportunity to change the present method of apportionment. Delegates to a convention, however, are elected 3 per senate district, plus 15 delegates elected at large. N. Y. Const. Art. XIX §2. Thus, the same discrimination as exists in the Senate against popular representation of each of the counties which has 6% or more of the state's population also exists in electing delegates. The five 6%-or-more counties with 57% of the state's population would have been able to elect only 81 of the 174 district delegates and at best a narrow majority of all the delegates, 96 (81 plus the 15 delegates at large)

out of 189. Standing alone, such an impairment of the majority's voting power must disqualify this procedure as a political remedy.

A fortiori such disqualification applies for the future. The next opportunity to elect delegates is in 1978, if the vote in 1977 is to hold a convention. The probability is that by 1978 the population of the counties having 6% or more of the state's population will be unable to elect a majority, even counting the delegates at large. The constitution requires an apportionment to be made by 1976. Projection of present population trends to 1970 suggests that in a senate apportionment based on the 1970 census Nassau County will gain two senators, Kings, New York and Bronx will each lose one, and Queens' and Erie's representation will not change. This would result in a 59-member Senate, since the Queens-Nassau total would be nine higher than in the 1894 apportionment. See pp. 24-27, *supra*. Assuming, as is almost certain, that a substantial majority of the state's population will continue to reside in these counties, this majority in 1978 would be able at best to elect only 90 delegates (75 plus 15 at large) out of a total of 192—seven short of a majority.

Thus, by any reasonable standard the majority of the people of the State of New York do not have a practical political remedy available. This Court is their last and only resort to correct the discrimination against them.

CONCLUSION

The judgment of the court below should be reversed and the case remanded with a direction to grant the relief sought in the complaint. Failing such action, the judgment of the court below should be reversed and the case remanded with a direction to admit and consider the evidence excluded at the prior hearing.

Respectfully submitted,

LEO A. LARKIN
Corporation Counsel of the City
of New York
Attorney for Paul R. Screvane,
et al., Appellees

GEORGE H. P. DWIGHT
BENJAMIN OFFNER
of Counsel

September 16, 1963

APPENDIX A

Article I, Section 1, of the New York Constitution reads:

> "No member of this state shall be disenfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers, except that the legislature may provide that there shall be no primary election held to nominate candidates for public office or to elect persons to party positions for any political party or parties in any unit of representation of the state from which such candidates or persons are nominated or elected whenever there is no contest or contests for such nominations or election as may be prescribed by general law."

Article II, Section 1, of the New York Constitution reads:

> "Every citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state for one year next preceding an election, and for the last four months a resident of the county, city, or village and for the last thirty days a resident of the election district in which he or she may offer his or her vote, shall be entitled to vote at such election in the election district of which he or she shall at the time be a resident, and not elsewhere, for all the officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided however that no elector in the actual military service of the state, or of the United States, in the army, navy, air force or any branch thereof, or in the coast guard, or the spouse, parent or child of such elector, accompanying or being with him or her, if a qualified voter and a resident of the same election district, shall be deprived of his or

her vote by reason of his or her absence from such election district, and the legislature shall provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes and provided, further, that in any election district in which registration is not required to be personal, no elector who is registered and otherwise qualified to vote at an election, shall be deprived of his or her right to vote by reason of his or her removal from one election district to another election district in the same county within the thirty days next preceding the election at which he or she seeks to vote, and every such elector shall be entitled to vote at such election in the election district from which he or she has so removed.

"Notwithstanding the foregoing provisions, after January first, one thousand nine hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such person is also able, except for physical disability, to read and write English."

APPENDIX B

"Total Representation" in New York State by Counties in Pending Apportionment Based on 1960 Census

IN ACCORDANCE WITH THE METHOD USED BY MR. JUSTICE CLARK IN BAKER v. CARR, 369 U. S. 186, 255 (1962)

County	Population (to nearest thousand)	Representation (to nearest hundredth)	Ratio of Representation to Population (to nearest hundred)
Kings	2,519,000	37.42	1:67,400
Queens	1,733,000	26.16	1:66,200
New York	1,584,000	22.53	1:70,400
Bronx	1,368,000	20.53	1:66,700
Nassau	1,276,000	17.89	1:71,300
Erie	1,040,000	15.89	1:65,400
Westchester	782,000	13.89	1:56,300
Suffolk	650,000	12.89	1:50,400
Monroe	571,000	12.89	1:44,300
Onondaga	415,000	9.26	1:44,600
Albany	269,000	4.63	1:58,500
Oneida	259,000	4.63	1:56,300
Niagara	236,000	4.63	1:51,300
Richmond	217,000	4.63	1:47,200
Broome	210,000	4.63	1:45,700
47 least populous counties (average)	3,112,000	87.47	1:35,600
STATE	16,241,000	300.00	1:54,100 (average)

COUNTIES RANKED BY RATIO OF REPRESENTATION TO POPULATION

Nassau	1:71,300
New York	1:70,400
Kings	1:67,400
Bronx	1:66,700
Queens	1:66,100
Erie	1:65,400
Albany	1:58,500
Westchester	1:56,300
Oneida	1:56,300
STATE AVERAGE	1:54,100
Niagara	1:51,300
Suffolk	1:50,400
Richmond	1:47,200
Broome	1:45,700
Onondaga	1:44,600
Monroe	1:44,300
47 least populous counties (average)	1:35,600

NOTE: It is impossible to compute the representation of individual counties other than the 15 most populous, because it is not known how the 47 least populous counties will be grouped into senate districts.

APPENDIX C

Facsimile of Face of Voting Machine Used in Part of New York County in the General Election on November 5, 1957

PHOTOPRINT

(Mounted Opposite)

	YES / NO	YES / NO	YES / NO	YES / NO	YES / NO	YES / NO	YES / NO

	1 Mayor Vote for one	2 Comptroller Vote for one	3 President of the Council Vote for one	4 Borough President Vote for one	5	6	7	8	9 Justices of the Supreme Court, 1st Judicial District Vote for five	10	11 Justices of the City Court Vote for two	12 Judge of the Court of General Sessions Vote for one	13 District Attorney Vote for one	14 Justice of the Municipal Court, 2nd District Vote for one	15 Member of the County Committee, 69th District Vote for one
REPUBLICAN A	1 A Christenberry	2 A McGahan	3 A Simon	4 A Krukowitch	5 A Atlas	6 A Macchia	7 A Weaver	8 A Cavagan	9 A Aurelio	10 A Coleman	11 A Parella	12 A Carney	13 A Hogan	14 A Raimo	15 A Isaacs
DEMOCRAT B	1 B Wagner	2 B Gorosa	3 B Stark	4 B Jack	5 B Capozzoli	6 B Backer	7 B Amsterdam	8 B Cavagan	9 B Aurelio	10 B Coleman	11 B Parella	12 B Carney	13 B Hogan	14 B Raimo	15 B Gayle
LIBERAL C	1 C Wagner	2 C Gorosa	3 C Stark	4 C Jack	5 C Capozzoli	6 C Backer	7 C Amsterdam	8 C Cavagan	9 C Aurelio	10 C Coleman	11 C Parella	12 C Carney	13 C Hogan	14 C Raimo	15 C Isaacs
SOCIALIST WORKERS D	1 D Cowley	2 D Zuckoff	3 D Kiezel												
SOCIALIST LABOR E	1 E Hass	2 E Emanuel	3 E Emery												
UNITED TAX PAYERS F	1 F Battista	2 F Sussman	3 F Sable												15 F Cort
CITY FUSION G	1 G Wagner	2 G Gorosa	3 G Stark												

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Interest of the United States	2
Statement	3
Argument	10
Introduction and summary	10
The discrimination against voters in populous counties in the per capita representation accorded them in the New York legislature constitutes a denial of equal protection of the laws	14
A. The calculated discrimination against voters residing in any county with more than six percent of the State's citizen population violates the equal protection clause because the differentiation is irrelevant to any permissible objective of legislative apportionment	14
B. Even if the inequalities in per capita representation in the Senate are based upon permissible criteria, the discrimination in both houses is so gross in relation to the objective as to deny equal protection	33
Conclusion	38
Appendix	39

CITATIONS

Cases:

Baker v. *Carr*, 369 U.S. 186	8, 28
Brown v. *Board of Education*, 347 U.S. 483	28

707-080—63——1

Cases—Continued

	Page
Chastleton Corp. v. *Sinclair*, 264 U.S. 543	28
Davis v. *Synhorst*, 217 F. Supp. 492	29
Dowling, In re, 219 N.Y. 44	15
Fay, In re, 291 N.Y. 198, 52 N.E. 2d 97	15, 17
Gomillion v. *Lightfoot*, 364 U.S. 339	20
Gray v. *Sanders*, 372 U.S. 368	12, 21 22, 30
League of Nebraska Municipalities v. *Marsh*, 209 F. Supp. 189	29
MacDougall v. *Green*, 335 U.S. 281	22, 25
Maryland Committee for Fair Representation v. *Tawes*, No. 29, this Term	3, 10, 12, 13, 33, 36
Moss v. *Burkhart*, 207 F. Supp. 885	28
Sherill, In re, 188 N.Y. 185, 81 N.E. 124	15, 17
Thigpen v. *Meyers*, 211 F. Supp. 826, pending on appeal, No. 381, this Term	28, 29
WMCA, Inc. v. *Simon*, 370 U.S. 190	1, 8
Constitutions and statutes:	
U.S. Constitution:	
Fourteenth Amendment	2, 7, 8, 10, 28, 29, 37
Civil Rights Act, 42 U.S.C. 1983 and 1988	3
28 U.S.C.:	
Sec. 2201	4
Sec. 2202	4
Sec. 1343(3)	4
New York Constitution of 1894, as amended, 2 McKinney's Consolidated Laws of New York Annotated, Part 1	7
Article III:	
Sec. 1	39
Sec. 2	39
Sec. 3	39
Sec. 4	1, 7, 14, 15, 46
Sec. 5	26, 27, 34, 49
Article XIX, Sec. 2	29
New York Constitution of 1894:	
Article III:	
Sec. 1	4
Sec. 2	4, 7
Sec. 3	4
Sec. 5	7

Constitutions and Statutes—Continued — Page

New York Constitution of 1846 — 27
New York Constitution of 1821 — 27, 37
New York Constitution of 1777 — 27
Article I, Sec. 7 — 37
56 McKinney's Consolidated Laws of New York Annotated (1963 Supp.):
Sec. 121 — 51
Sec. 122 — 52
Sec. 123 — 52

Miscellaneous:

Emerson, *Malapportionment and Judicial Power*, 72 Yale L.J. 64 (1962) — 30
Exploding Metropolis, The, written by the Editors of *Fortune* (1957) — 31
H. Rep. No. 2533, 85th Cong., 2d Sess — 32
Kennedy, *The Shame of the States*, N.Y. Times Magazine, May 18, 1958, p. 12 — 31
Merry, *Minority Rule: Challenge to Democracy*, Christian Science Monitor, October 2, 1958, reprinted in 106 Cong. Rec. 13836 (daily ed.) — 31
One Man—One Vote, A Statement of Basic Principles of Legislative Apportionment (Twentieth Century Fund, 1932) — 30
Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581 — 6, 15, 17
Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1 — 7, 34
United States Advisory Commission on Intergovernmental Relations, *Report: Apportionment of State Legislatures* (1962) — 32
United States Commission on Intergovernmental Relations, *Report to the President* (1955) — 31
Wells, *Legislative Representation in New York State*, (International Ladies' Garment Workers Union, 1963) — 6, 7

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

WMCA, INC., R. PETER STRAUS, ET AL., APPELLANTS

v.

CAROLINE K. SIMON, SECRETARY OF STATE OF THE STATE OF NEW YORK, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the three-judge district court dismissing the complaint (R. 294–323) is reported at 208 F. Supp. 368.

A prior opinion dismissing the complaint upon other grounds (R. 88–113) is reported at 202 F. Supp. 741. That order was vacated and the cause remanded for further consideration in *WMCA, Inc.* v. *Simon*, 370 U.S. 190.

JURISDICTION

The judgment of the district court was entered on August 17, 1962 (R. 324–325). The notice of appeal to this Court was filed on August 29, 1962 (R. 325–327), and probable jurisdiction was noted on June 10, 1963 (374 U.S. 802; R. 238). The jurisdiction of this Court rests on 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Whether the provisions of the New York Constitution which require citizens in any county having more than six percent of the State's population to be given less representation *per capita* in the State Senate than citizens of less populous counties, operate to deny citizens of the populous counties equal protection of the laws.

2. Whether the discrimination against citizens in populous counties in *per capita* representation in both houses of the New York legislature, even if based upon sometimes-permissible criteria, is here so gross in relation to any permissible objective, as to deny the citizens of populous counties the equal protection of the laws.

STATUTES INVOLVED

The relevant provisions of the New York Constitution and laws are summarized in the Statement, pp. 4–7, and set forth in the Appendix, pp. 39–53.

INTEREST OF THE UNITED STATES

This is one of four cases pending argument on the merits in which the Court will be called upon to formulate under the Fourteenth Amendment the con-

stitutional principles applicable to challenges to malapportionment of a State legislature. The United States has filed its principal brief in *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, because that case presents a greater variety of issues. There we attempted to present a compendious analysis applicable to all four cases and showing their relation to each other. The instant case raises specific problems in the application of those principles, especially the validity of calculated discrimination in *per capita* representation against the citizens of populous counties solely on the basis of their relative population.

Individually and collectively, these cases present issues of great importance to millions of American citizens seeking full and fair participation in their federal and State governments. This is the primary basis of the government's interest.

STATEMENT

This action was brought on May 1, 1961, in the District Court for the Southern District of New York by the appellants, including individual appellants, who are citizens, residents and registered voters in five of the six most populous New York counties, in their own behalf and on behalf of all New York citizens similarly situated (R. 2–3). Appellees, who were sued in a representative capacity, are officials charged by law with duties in connection with reapportionment and State elections (R. 3–4). The complaint claimed rights under the Civil Rights Act, 42 U.S.C. 1983 and 1988, and asserted jurisdiction under 28 U.S.C.

1343(3). It sought an injunction and also relief under 28 U.S.C. 2201 and 2202 (R. 1–2).

The complaint was directed at those provisions of the New York Constitution which provide for the apportionment of seats in a bicameral legislature. Article III, §§ 1, 2 and 3 provided that the Senate should initially have 50 seats, and it created 50 senatorial districts, as provided therein. Article III, § 4, as amended, provides for readjustment of the size of the Senate and reapportionment of the seats beginning in 1932 and every decade thereafter in the following manner:

> Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. * * *
>
> No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.
>
> The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty mem-

> bers, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

As interpreted by practice and judicial decision, reapportionment and readjustment of the Senate is accomplished in several stages, two of which are important in the instant case. First, the total population of the State, excluding aliens, as determined by the last federal census, is divided by 50 in order to obtain a ratio. The counties on account of which the size of the Senate might have to be increased are then identified—the counties having three or more ratios, *i.e.*, more than 6 percent of the citizen population. Those counties (which we hereafter call "the populous counties") are then allocated seats for every full ratio. Fractions of a ratio are disregarded. Thereafter each county is divided into the appropriate number of Senate districts.

The second stage is the apportionment of seats to the less populous counties, *i.e.*, to counties none of which has 6 percent of the citizen population. To the 50 original seats there is added the total of seats added by reason of the growth of the populous counties since 1894. In other words, the total number of seats which the populous counties have gained since 1894 is added to the 50 original seats but the seats the other populous counties have lost since 1894 are not deducted from the seats to be added. Currently the New

707-080—63——2

York Senate has 58 seats. From that total, the number assigned to the populous counties is subtracted—27 under the 1953 apportionment—and the seats remaining available—31 under the 1953 apportionment—are then apportioned among the less populous counties. The second ratio is obtained by dividing the number of available seats for distribution to the less populous counties (31) into the total citizen population of the less populous counties. Any populous county entitled to two or three seats is then divided into senatorial districts.[1] Counties with substantially less than one second ratio are combined into multi-county districts.[2]

The result is to give the populous counties markedly less *per capita* representation in the State Senate than the less populous counties. Under the 1950 census and 1953 apportionment a senator from one of the less populous counties represented, on the average, 195,859 citizens, whereas a senator from a populous county represented 301,178.[3] A citizen in a less populous county, in other words, had 1.5 times the representation of the average citizen in a populous

[1] A less populous county may be entitled to 3 seats if it has less than 3 full *first* ratios but has more than 3, or has 2 and a large fraction, *second* ratios. A county can have less than 3 first ratios but more than 3 second ratios because the first ratio is larger than the second.

[2] The apportionment of the New York Senate is described in detail in Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581, 603–632. See also Wells, *Legislative Representation in New York State* (International Ladies' Garment Workers Union, 1963), pp. 15–17, 18–19.

[3] The figures are computed from the tables on R. 227–229 and 244.

county. Under the apportionment based upon the 1960 census, the ratio will be 1.7 to 1.[4]

The constitution of 1894 also established an Assembly composed of 150 assemblymen. Art. III, § 2. Each county, except Hamilton County (which "elect[s] with the County of Fulton")—a total of 61—is guaranteed one seat. Art. III, § 5. The remaining 89 seats are apportioned among the appropriate counties in accordance with a ratio obtained by dividing the 150 seats into the total citizen population. A county whose population is at least one and one-half times the ratio receives an additional assemblyman. The remaining seats are then apportioned among those counties whose citizen population is [redacted] or more whole ratios, with any remaining seats being apportioned on the basis of "highest remainders." Finally, the counties are divided into the appropriate assembly districts.[5]

Specifically, the complaint challenged as violations of the due process and equal protection clauses of the Fourteenth Amendment those provisions of the New York Constitution which (1) "require that the

[4] Article III, § 4 requires a new apportionment no later than 1966. The rules laid down in the New York Constitution for apportioning the Senate are so detailed that the legislature has little discretion except in determining which of the less populous counties shall be joined together and in districting within counties having more than one senator. Similarly, the legislature has little discretion as to the Assembly except in districting within counties with more than one assemblyman. Therefore, the outlines of the new apportionment can be predicted with assurance (see R. 234, 237–240).

[5] See Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1, 13–30; see also Wells, *Legislative Representation in New York State*, *supra*, pp. 17–19.

total of fifty Senators * * * shall be increased by those Senators to which any of the larger counties become entitled in addition to their allotment as of 1894, but without effect for decreases in other large counties"; (2) "prohibit any county from having four or more Senators unless it has a full ratio for each Senator"; and (3) "require that every county except Hamilton shall always be entitled to one [assemblyman] coupled with the limitation of the entire membership to 150" (R. 6). Because of those provisions and related sections, the complaint alleged, the apportionment formula violated the Fourteenth Amendment, since it resulted "when applied to the population figures of the State in a grossly unfair weighting of both houses in the State legislature in favor of the less populated rural areas of the state to the disadvantage of the densely populated urban centers of the state" (R. 6).

A three-judge court was convened. The New York City defendants admitted the allegations of the complaint and requested the court to grant plaintiffs the relief they were seeking (R. 87–88). The remaining defendants moved to dismiss (R. 90). On January 11, 1962, the district court held that it had jurisdiction but dismissed the complaint on the ground that it failed to state a claim upon which relief could be granted, the issue being nonjusticiable (R. 90, 114). On appeal, this Court vacated the judgment and remanded the cause for reconsideration in the light of *Baker* v. *Carr*, 369 U.S. 186. *WMCA, Inc.* v. *Simon*, 370 U.S. 190. On July 10, 1962, the district court ordered the defendants to answer or otherwise

move in respect to the complaint (R. 114). The chairman of the Board of Supervisors of Nassau County joined the New York City defendants in admitting most of the allegations and requested the court to grant the appellants the relief which they were seeking (R. 116–117). The remaining defendants (now appellees) denied the material allegations and set up various defenses (R. 117–124).

At the hearing on the merits, a large amount of statistical material was admitted into evidence showing the population and citizen population of New York under various censuses both as a whole and by counties and other subdivisions. The apportionment of senators and assemblymen under the 1953 census was established and other computations were put in evidence showing the apportionment to be made under the 1960 census. The basic figures are shown on four charts appearing at R. 227–229, 234, 237, 238–240. Since the appropriateness and significance of the several statistical computations and comparisons are disputed, we reserve further discussion for the Argument.

The district court refused to receive evidence showing what effect the reapportionment rules had on the representation of citizens residing in New York and Nassau counties in respect to such financial matters as the collection of taxes and disbursement of State aid (R. 147–149). The court also excluded evidence proffered to show that the reapportionment rules were "devised for the very purpose" of creating a class of citizens whose representation was inferior to that of a more preferred class and that there was

"intentional discrimination" against citizens of New York City (R. 143–146).

On August 16, 1962, the district court dismissed the complaint on the merits (R. 324–325). The opinion, prepared by District Judge Levet, concluded that appellants had not shown by a fair preponderance of the evidence that there was invidious discrimination; that the apportionment provisions were rational, not arbitrary; that they were of historical origin; that they contained no improper geographical discrimination; that they could be amended by an electoral majority of the people; and that they therefore were not unconstitutional.

ARGUMENT

INTRODUCTION AND SUMMARY

Our basic analysis of the constitutional standards to be applied in adjudicating the present challenges to the constitutionality under the Fourteenth Amendment of the apportionment of seats in State legislatures is set forth in the Brief for the United States in *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, this Term.[6] Here, we predicate not only that the Fourteenth Amendment imposes substantive limitations upon State legislative apportionment as urged in that brief (pp. 26–29) but also the correctness of the first proposition there advanced

[6] The analysis, as stated in our Maryland brief, proceeds on the assumption that the Fourteenth Amendment permits reasonable deviations from equal *per capita* representation in at least one house of the legislature. The assumption is made *arguendo*, reserving further judgment, because the issue does not have to be decided in the present cases.

(pp. 29–34)—that any substantial discrimination in *per capita* representation constitutes a denial of equal protection of the laws unless it bears a reasonable relation to some permissible objective of legislative apportionment.

The New York apportionment, unlike those in Maryland, Alabama and Virginia, is not subject to attack as creating gross inequalities among voters without rhyme or reason.[1] There is no crazy-quilt as under the preexisting Alabama apportionment, nor any manifestly capricious discrimination such as that against Fairfax and Arlington Counties and the City of Norfolk in Virginia, and between the City of Baltimore and Baltimore, Montgomery and Prince Georges Counties in the Maryland Senate. In New York, both houses are apportioned systematically, and the apportionment has been kept reasonably current.

The apportionment of seats in the New York Senate, while systematic, is unconstitutional, we submit, under the third proposition advanced in our Maryland brief (pp. 39–45). The systematic discrimination in *per capita* representation is based upon irrelevant, even invidious, criteria. The New York Constitution calls for discrimination, in the apportionment of senators, against the voters of any county that has 6 percent, or more, of the State's population. (For convenience we call such counties "the populous counties" and describe all others as "the less populous coun-

[1] We are here considering only New York's basic *apportionment* methods. We are not considering the various rules for *districting* within counties, which the brief for the appellants argues (pp. 37–39) create crazy-quilts within particular counties.

ties.") We assume *arguendo*, as stated in the *Maryland* case, that under some circumstances a limitation upon the number of representatives that can be captured by geographically small but populous areas may be a reasonable method of assuring that enough seats will be available for the rest of the State to provide representation for each locality. That objective is secured in New York, however, by guaranteeing each county at least one seat in the lower, more numerous house of the legislature, and the discrimination in the Senate adds nothing. Furthermore, the discriminatory mechanism goes far beyond any measure necessary to assure each area some representation. The populous counties are given proportionately less voting power *per capita* as they acquire larger parts of the total population. Thus, the provision for distributing among the less populous counties the seats which are periodically added to the Senate on account of the populous counties stands unmasked as deliberate discrimination against the urban voter, in favor of the rural voter, designed to preserve minority rule. To deprive a man of a vote or to denigrate the value of his vote just because he lives in the city rather than the country is an arbitrary discrimination wholly foreign to democratic ideals. Cf. *Gray* v. *Sanders*, 372 U.S. 368.

We also urge that even if the inequalities in representation *per capita* are based upon criteria relevant to permissible objectives of legislative apportionment, the inequalities are so gross and the resulting departure from the principle of majority rule is so wide, in relation to the objectives, as to constitute

unreasonable discrimination in violation of the equal protection clause. The argument parallels the fourth proposition developed in our *Maryland* brief (pp. 46–50). In New York, neither house is apportioned substantially in accordance with population. Where one house is so apportioned, the Constitution may leave room for considerable accommodation of competing considerations in the other house. Substantially unequal representation *per capita* in both houses requires the strongest justification. Here, the discrimination gives potential control of both houses to minorities of less than forty percent. The built-in disparity in the Senate between the average voting power of the populous counties, on the one hand, and the less populous, on the other, will be 1.7 to 1 after a reapportionment based upon the 1960 census; it is often greater in the Assembly. The desire to assure a diffusion of representation into every locality may justify giving appropriate geographical units each one representative, which has been done in the Assembly, but as here applied, the interest in "diffusion of representation" is a euphemism for guaranteed minority rule—not merely as a check or balance in one house while a popular majority controls the others, but in the entire legislature.

The discrimination against voters in populous counties is not so gross as in Maryland and Alabama, nor is either house subject to control by representatives elected by as small a proportion of the people as in the Alabama and Maryland Senates. The apportionment of the Maryland and Alabama legislatures would be unconstitutional, in our view, even if

that in New York were sustained. We submit, however, despite the differences in degree, that the discrimination in *per capita* representation and denial of majority rule in both houses of the New York legislature offends the Fourteenth Amendment.

THE DISCRIMINATION AGAINST VOTERS IN POPULOUS COUNTIES IN THE PER CAPITA REPRESENTATION ACCORDED THEM IN THE NEW YORK LEGISLATURE CONSTITUTES A DENIAL OF EQUAL PROTECTION OF THE LAWS

A. THE CALCULATED DISCRIMINATION AGAINST VOTERS RESIDING IN ANY COUNTY WITH MORE THAN SIX PERCENT OF THE STATE'S CITIZEN POPULATION VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE THE DIFFERENTIATION IS IRRELEVANT TO ANY PERMISSIBLE OBJECTIVE OF LEGISLATIVE APPORTIONMENT

The New York Constitution provides for the apportionment of seats in the State Senate in a manner that is undeniably calculated to discriminate against the voters of any county having six percent, or more, of the State's citizen population. Its function is slightly concealed by the initial provisions which seem to imply that the apportionment will be by population. Senate districts are to be periodically (Art. III, § 4)—

> so readjusted or altered that each Senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens * * *.

The discrimination against the populous counties is imposed by a subsequent passage (*ibid.*):

> The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members,

> except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The foregoing provision, as interpreted by uniform practice since 1894 and the decisions of the New York courts, requires the apportionment of the Senate to be accomplished in several stages, two of which are relevant here. First, the total population (excluding aliens) is divided by 50 in order to obtain the ratio. Since the 1960 citizen population was 16,240,786, the ratio will be 324,816 when the new apportionment is made.[8] The counties on account of which the size of the Senate might have to be increased will be those having three or more ratios—in other words, more than six percent of the citizen population. (We call them, for convenience, "the populous counties," and describe all others as "the less populous counties.") The populous counties are ascertained and allocated their seats. Each receives one senator for each whole ratio, but fractions above THREE ratios must be disregarded. N.Y. Const., Art. III, § 4; see *In Re Sherill,* 188 N.Y. 185, 81 N.E. 124, 131–132; *In re Dowling,* 219 N.Y. 44, 113 N.E. 545, 546–548; *In re Fay,* 291 N.Y. 198, 52 N.E. 2d 97, 100–101; Silva, *Apportionment in New York, supra,* pp. 604–608.

[8] The New York Constitution requires that the legislature reapportion and redistrict no later than 1966. Art. III, § 4.

Under the 1960 census, the apportionment of the populous counties will be as follows (R. 288):

County	Population	Senate seats
Bronx	1, 368, 207	4
Erie	1, 039, 648	3
Kings	2, 518, 510	7
Nassau	1, 275, 801	3
New York	1, 584, 069	4
Queens	1, 733, 081	5
	9, 519, 316	26

Because Nassau and Queens gained seven seats since 1894, seven seats will be added, and the Senate will be composed of 57 instead of 50 members.[9]

The second stage involves the apportionment of the remaining seats. Instead of dividing the total of 57 seats evenly among all the counties (prior to grouping or dividing into districts), the seven added seats, plus the 24 remaining after the first allocation, are given exclusively to counties having less than six percent of the citizen population ("the less populous counties"). This is done by dividing the 31 available seats into the citizen population of the less populous counties in order to obtain a second ratio on the

[9] On the other hand, the seven additional seats are not reduced by virtue of the fact that New York and Bronx Counties, which together had 12 seats in 1894, will have only 8 under the new apportionment. Thus, the number of extra seats for distribution to the less populous counties will be greater than the total number of seats the populous counties have gained since 1894.

basis of which seats are assigned to the less populous counties or to districts composed of several counties where necessary to make up a ratio. Although the populous counties receive more than 4 senators only for whole first ratios, the less populous counties may receive seats for large fractions of the considerably smaller second ratios. Ultimately, all the counties with more than one senator are divided into senatorial districts. See *In re Sherill, supra,* 81 N.E. at 132; *In re Fay, supra,* 52 N.E. 2d at 101–102; Silva, *Apportionment in New York, supra,* pp. 628–638.

The resulting discrimination against the voters in any populous county (*i.e.*, one having six percent or more of the citizen population) is apparent. Kings County, which would be entitled to 9 seats in the new apportionment on the basis of population will receive 7; Bronx, entitled to 5, will receive 4; and Erie, entitled to 4, will receive 3.[10] The six first-ratio counties on the basis of citizen population should have a total of 34 Senate seats out of 57—a solid majority; under State law they can have only 26—a definite minority of the Senate.

The average extent to which the objectionable provisions downgrade the vote of anyone who lives in a populous county is readily measured. The populous

[10] The figures in the text were calculated by allocating 57 seats among the counties on the basis of their 1960 citizen population as shown at R. 227–230, according to the rule of whole ratios plus highest remainders.

counties will have 26 senators for 9,519,000 citizens, or one senator for each 366,128. The less populous "second ratio" counties will have 31 senators for 6,721,000 citizens, or one senator for each 216,822. The result, precisely measured, is that every citizen in a less populous "second ratio" county has, on the average, 1.7 times the representation in the State Senate of a citizen in one of the six populous counties."

These consequences are the result of a built-in, discriminatory mechanism explicitly aimed at counties populous enough to have three or more ratios. The

[11] The disparity is as high as 1.7 to 1 for four reasons: (1) The apportionment to the less populous counties is made on the basis of the enlarged Senate—57 senators—and not the assumed 50 seats. (2) All seven additional seats are assigned to the less populous counties in the sense that they receive not 27/57ths—the equivalent of 24/50ths—but 34/57ths. (3) Fractional ratios are disregarded in the case of the populous counties but taken into account in the case of the less populous counties. (4) When one of the populous counties loses a seat, it is not subtracted from the total number but is permanently carried forward and allocated as an extra seat available to the less populous counties.

The actual disparities between voters in individual populous counties and individual less populous counties are often much greater than the average disparity between two classes. The differences result from the manner in which Senate seats are allocated among the less populous counties, the combinations of small counties into single districts, and the variations in the size of the fractional ratios disregarded in dealing with counties having four or more seats. Since our argument is focused primarily upon the discrimination between the populous and less populous counties, the average disparity as between the two classifications is the most reliable figure. The

discrimination is permanent. The larger that particular populous counties become in proportion to the rest of the State; the worse the discrimination gets. The Senate apportionment on the bases of the 1950 census gave the less populous counties 1.5 times the *per capita* representation of the more populous counties.[12] Under the apportionment based upon the 1960 census, the ratio,

---

individual disparities are illustrated by the table below, which is extracted from R. 234:

County	1960 citizen population	Number of senators	Citizen population per senator	Ratio to most underrepresented county
Nassau	1,275,801	3	425,267	1.00
New York	1,584,069	4	396,017	1.07
Kings	2,518,510	7	359,787	1.18
Queens	1,733,081	5	346,616	1.22
Erie	1,039,648	3	346,549	1.22
Bronx	1,368,207	4	342,052	1.24
Albany	269,088	1	269,088	1.58
Westchester	782,179	3	260,726	1.63
Oneida	259,330	1	259,330	1.63
Niagara	235,677	1	235,677	1.80
Suffolk	650,112	3	216,704	1.96
Onondaga	414,770	2	207,385	2.05
Monroe	571,029	3	190,343	2.23
All multicounty districts	3,539,285	17	208,193	2.04

The populous counties appear above the heavy line.

[12] The citizen population of the populous counties was 8,131,810. Each of their 27 senators represented, on the average, 301,178 citizens. The citizen population of the less populous counties was 6,071,639. Each of their senators represented, on the average, 195,859 citizens (R. 244).

as we have shown, will be 1.7 to 1.[13] If the voting population of the six populous counties should increase by 4,000,000 people in the decade 1960–1970, while the rest of the State remained constant, the populous counties would receive approximately 31 senators, half the State Senate as then composed, although they would have 67 percent of the voters. A vote in a less populous county would be worth just twice that in a populous county.

The vice in the New York Constitution is that the criterion of differentiation—whether the county in which a voter lives has 6 percent, or more, of the population—is irrelevant to any permissible purpose of the electoral process or legislative apportionment. The equal protection clause, we submit, does not permit discrimination against a voter because of the number of his neighbors or the location of his residence. The prohibition applies not only to eligibility to vote, but to counting the ballot, weighing its value, and apportioning representatives.

It is manifestly arbitrary and capricious to apportion representatives on the basis of race or color. Cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339. Nor can that case be distinguished on the basis of the Fifteenth Amendment; it would be equally arbitrary and

[13] It seems misleading to compare the present representation *per capita* of the six most populous counties according to the 1960 census with the present *per capita* representation of the less populous counties because the New York Constitution requires a new apportionment. See p. 15, note 6 above. The ratio, for what little it is worth, is 1.26 to 1. The ratio was reduced between 1953 and 1960 because the populous counties taken together did not grow as fast as the State as a whole and will lose four senators under the new apportionment.

capricious to apportion representatives on the basis of national origin or religion, or of some such utter irrelevancy as the length of the average voter's left foot.

Occupation, income and residence are likewise irrelevant. In *Gray v. Sanders*, 372 U.S. 368, 379–380, the Court held:

> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions.

If a rural voter is not entitled, by reason of that fact alone, to have a greater voice than an urban voter in the election of a governor, he cannot be entitled, merely by reason of that fact alone, to have greater representation in a State legislature. Both concern the citizen's opportunity to participate in self-government. The voter who has no special virtue in choosing a chief executive by reason of his occupation, economic status or place of residence cannot suddenly claim such value in selecting members of the legislature. It is not a permissible function of legis-

lative apportionment to give special representation to minorities of any race, color, creed, occupation, residence or economic status. Such criteria are all irrelevant.

This is not to say that because every ballot must be given equal weight in an election, every citizen must be given equal representation in a legislature. We recognize the distinction drawn in *Gray* v. *Sanders*. The apportionment of representatives serves different functions than the electoral process. We assume, for present purposes, that the people of a State may, within limits, choose to have their legislators represent not voters but political subdivisions. They may wish to ensure that no locality lacks for some spokesman to explain its needs and views upon an issue. Cf. *MacDougall* v. *Green*, 335 U.S. 281. They may wish to keep the districts small enough to enable the representatives to be closely in touch with all parts of the area. Achieving such objectives may require some sacrifice of the ideal of *per capita* equality of representation. An apportionment which serves such permissible objectives, we concede *arguendo*, is not invalid merely because it also results, if measured by the number of people represented by each seat, in classifications more or less corresponding to economic, occupational or geographical groups. An apportionment is not unconstitutional merely because it gives voters in some areas a larger *per capita* representation than others. This is all, we think, that the distinction drawn in *Gray* v. *Sanders* can reasonably

convey. It cannot mean that in the processes of apportionment, differences in economic or occupational status, geographic residence, or environmental factors like relative density or population have value as such.

We are also willing to assume *arguendo* that a differentiation drawn in terms of invidious criteria, such as the density of population, may possibly be constitutional if it is reasonably adapted to achieving a permissible goal of legislative apportionment. For example, it might be argued that if the size of a legislative body is to be kept small enough for deliberation, placing a limit on the number of representatives that may come from a few populous districts is the only way of saving enough seats for others to allow every part of the State at least one spokesman for its views and interests. That arrangement might also advance the goal of keeping the legislative districts in less populous areas geographically small enough to allow the legislator to be thoroughly familiar with local conditions.

No such justification is available for New York's calculated discrimination against the voters of every county whose population exceeds six percent of the State's total. The discrimination is in the apportionment of the Senate, the smaller, upper chamber of the legislature. There are 150 seats in the Assembly. Not only are the Assembly districts much smaller than the Senate districts, but every county (except Hamilton) is guaranteed at least one representative. It is

in the Assembly, therefore, that representation is diffused so as to assure every locality a spokesman familiar with its problems, needs and interests.

Furthermore, the formula that produces the discrimination goes beyond securing enough Senate seats for the less populous areas to ensure that none goes unrepresented. That could be done by reserving for them a specified number of seats and then, when a populous county with more than three senators became entitled to additional representation, assigning the new seats provided by the Constitution to that county so as not to disturb the absolute number of senators apportioned to the less populous counties. Such a rule would be enough to prevent the relative growth of the populous counties from causing an increase in the area of any Senate district.

The present arrangement is just the reverse. The counties entitled to three or more senators share only in the apportionment of the first 50 seats. The additional seats, added because of the growth of the populous counties, are apportioned only to the less populous. Furthermore, when one of the more populous counties loses seats as compared to its quota in 1894, the loss does not reduce the size of the legislature. New York and Bronx Counties together had 12 seats in 1894,[14] but they will have only four apiece under the new apportionment. The other four populous counties will have seven more seats than they had in 1894. While the populous counties as a group,

[14] The division of Bronx and New York into separate counties occurred after 1894.

therefore, will have only three more seats than in 1894, the Senate will nevertheless have 57 rather than 53 seats, and an extra seven rather than an extra three seats will be distributed to the less populous counties.

These are not reasonable ways of keeping districts small in area or of assuring some representation to each part of the State. Generalized references to the freedom of a State "to assure a proper diffusion of political initiative" (*MacDougall* v. *Green*, 335 U.S. 281, 284) disregard the actual operation, under present circumstances, of New York's method of apportioning the State Senate. Its only function is to reduce the *per capita* representation of the voter in the populous counties as their relative population rises in an effort to maintain minority rule.

Nor can the discrimination in the New York Senate be justified upon the ground that the populous counties are more adequately represented in the Assembly, where each county is guaranteed a representative and the remaining seats are apportioned by population. That arrangement also operates in favor of the less populous counties. Under the next apportionment, the populous counties will receive 48 percent of the assemblymen—72 out of 150—although they have 59 percent of the total citizen population. In the populous counties an assemblyman will represent, on the average, 132,200 citizens; in the less populous counties there will be, on the average, one assemblyman for each 86,170 citizens. Thus, the average disparity will be 1.53 to 1. Many of the individual disparities will

run much higher, as shown by the following table excerpted from R. 238–240: [15]

County	Number of districts	Citizen population per district	Number of representatives	Ratio to most underrepresented district
Suffolk (large)	1	216, 704	1	1. 00
Queens (large)	4	173, 308	4	1. 25
Erie (large)	2	173, 275	2	1. 25
Bronx (large)	4	171, 026	4	1. 26
New York	12	132, 006	12	1. 64
Kings	15	119, 929	15	1. 80
Queens (small)	9	115, 539	9	1. 87
Erie (small)	6	115, 516	6	1. 87
Bronx (small)	6	114, 017	6	1. 90
Orange	2	89, 937	2	2. 41
Dutchess	2	85, 698	2	2. 52
Montgomery	1	56, 287	1	3. 84
Putnam	1	31, 006	1	6. 98
Greene	1	30, 931	1	7. 00
Lewis	1	23, 064	1	9. 39
Schoharie	1	22, 410	1	9. 66
Yates	1	18, 552	1	11. 68
Schuyler	1	14, 974	1	14. 47

[15] The table is partly based upon estimates because the New York Constitution leaves some discretion in districting within counties. See p. 7, note 4.

The major reason for the disparities in size of Assembly districts within the same county is contained in New York Constitution, as amended, Art. III, § 5, which provides: "In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants." An assembly district must be wholly within a senate district. The result is best illustrated by the situation in Monroe County, which will have five assembly and three senate districts under the next apportionment. Two of the senate districts may each be divided evenly into two

The constitutional history invoked by the court below (R. 307–312) condemns, rather than supports, the discriminatory formula for apportioning the New York Senate. We do not challenge New York's constitutional methods of apportionment as they operated in the past. The constitutions of 1777, 1821 and 1846 explicitly provided for the apportionment of the Senate in accordance with voters or population. The discriminatory mechanism was not introduced until 1894. If it operated unfairly then, the fact that the State has deprived a portion of its citizens of equal protection for 70 years would not validate continued discrimination. In truth, the situation has changed radically, and the arguments made today could not have been made with the same force a few decades ago. The less populous counties under the 1903 apportionment, for example, had only 1.2 times the representation of the populous counties.[16] The two-stage apportionment that might once have been regarded as an inept but relatively innocuous method of apportioning new seats required by the relatively faster growth of populous counties has become an instrument for giving each citizen in the less populous counties 1.7 times

assembly districts, but the third assembly district will have to be the size of a senate district; the large assembly district will therefore have approximately 190,000 citizens whereas the four smaller assembly districts will each have approximately 95,000 (R. 239, 240).

Other disparities are caused by the constitutional provision forbidding the division of a town with less than 1½ ratios in forming assembly districts. Art. III, § 5.

[16] Even under the 1953 apportionment the disparity in the representation of less populous and populous counties is only 1.5 to 1, compared with the 1.7 to 1 which will result under the new apportionment.

the voting power of a citizen in a populous county (pp. 15–20 above). The constitutionality of that arrangement must be judged, not by its initial impact, but by the manner in which it currently operates. *Chastleton Corp.* v. *Sinclair,* 264 U.S. 543; *Brown* v. *Board of Education,* 347 U.S. 483, 492–493.

Nor is appellees' case aided by the vote of the citizens of New York in 1957 not to call a constitutional convention. In deciding whether a federal court should exercise its equity jurisdiction to enjoin elections under an allegedly unconstitutional apportionment, it may be material to consider whether the complainants have a political remedy or a State judicial remedy, or are helpless unless heard in the federal court. *Baker* v. *Carr,* 369 U.S. 186, 258–259 (Mr. Justice Clark, concurring). The availability of a political remedy is irrelevant, however, to the substantive question, does the apportionment deny the complainants equal protection of the law. Complainants are entitled to that protection whether they be a majority or a minority; indeed, the protection of minorities is the very purpose of such constitutional guarantees. *Moss* v. *Burkhart,* 207 F. Supp. 885, 894 (W.D. Okla.); *Thigpen* v. *Meyers,* 211 F. Supp. 826, 832 (W.D. Wash.), pending on appeal, No. 381, this Term. The State cannot successfully defend a clear denial of equal protection on the ground that there are ways in which the law can be changed.[17]

[17] Even if the availability of a State political remedy were relevant as to whether a State violated the Fourteenth Amendment, the political remedy in New York is a very inadequate one. The New York Constitution provides for a referendum on whether to call a constitutional conven-

Stripped to its essentials, therefore, the challenge to the apportionment of the New York Senate raises an issue as clear cut as it is fundamental—may a State discriminate in *per capita* representation against the voters in populous areas and in favor of voters in less populous areas when the only function of the discrimination is to increase the political power of the latter beyond their numerical weight.

We submit that the Fourteenth Amendment does not tolerate discrimination based upon such irrelevant criteria. The point was settled, we think, by

---

tion every twenty years (a convention may also be called by majority vote of the legislature). Art. XIX, § 2. The question which is placed before the voters is "Shall there be a convention to revise the Constitution and amend the same?" *Ibid.* Thus, the issue of apportionment is not squarely presented and voters do not have the opportunity to decide whether to change the method of apportionment. Since many other issues would be considered by a convention, the voters' determination whether to call the convention will almost certainly, and properly, involve many other factors than apportionment. If the voters decide not to have a convention, it is impossible for the courts to determine whether the voters have decided not to reapportion or have rejected a convention, at least in part, on some other ground. *League of Nebraska Municipalities* v. *Marsh*, 209 F. Supp. 189, 192–193 (D. Neb.); *Davis* v. *Synhorst*, 217 F. Supp. 492, 501 (S.D. Iowa); *Thigpen* v. *Meyers*, *supra*, 211 F. Supp. at 832. In fact, as appellees Screvane, *et al.*, show in their brief (pp. 78–83), the determination of New York's voters in 1957 not to hold a convention was based on a variety of complex questions.

Moreover, even if a constitutional convention had been called, the delegates would have been elected on the basis of three per Senate district, *i.e.*, 174, plus 15 selected at large. Art. XIX, § 2. Thus, the large majority of the delegates would have been chosen on the very discriminatory basis which violates the Fourteenth Amendment.

Gray v. *Sanders,* discussed pp. 21–23 above, but the same decision is required by basic constitutional principles. Representatives are not chosen to represent acres of land, rocks or forests; they represent people, their needs and interests. The notion that any particular "community of interest" should be accorded greater voting-strength than the number of people comprising the community warrants is inconsistent with basic democratic ideals. See Emerson, *Malapportionment and Judicial Power,* 72 Yale L.J. 64, 73 (1962); *One Man—One Vote, A Statement of Basic Principles of Legislative Apportionment* (Twentieth Century Fund, 1962), pp. 8–9. If one minority, such as rural voters, is to be guaranteed greater political power, there is no reason why other minorities, such as labor union members, businessmen, Catholics, Negroes, suburbanites, slum-dwellers, and persons over 65, could not claim similar rights. The argument made on behalf of appellees comes down to the proposition that a State should be free to select a particular minority for preferential treatment in voting without any criteria whatever for making the selection. And if it may favor one, it may repress another. This, we submit, is the very essence of the arbitrariness that both equal protection and due process condemn.

Gross discrimination against populous areas and the arbitrary enhancement of the political power of rural voters not only subverts democratic principles generally; it also has the effect of precluding the States from meeting burgeoning needs resulting from

the transformation of the basic character of our society from predominantly rural to predominantly urban.[18] See Kennedy, *The Shame of the States*, N.Y. Times Magazine, May 18, 1958, pp. 12, 37; U.S. Commission on Intergovernmental Relations, *Report to the President* (1955), p. 3. It is widely agreed that the pressing domestic problems stemming from the metropolitan population explosion—housing, urban renewal and slum clearance, education, transportation, juvenile delinquency, water and air pollution—are not being adequately met. *Id.* at 38; *The Exploding Metropolis*, written by the Editors of *Fortune* (1957), p. 1. The failure is reflected not merely in unresponsiveness to special urban needs and lack of sympathy for the urban point of view, but also in affirmative action rendering it more difficult for urban areas to meet their own problems. This action takes such forms as systematically discriminatory taxation of underrepresented, generally urban, areas as contrasted with overrepresented rural areas; far greater *per capita* spending by the State in overrepresented rural areas than in the urban areas; and the denial even of the urban areas' proportionate share of matching funds provided by the federal government. In addition, the State legislatures have frequently re-

[18] In 1900, at least sixty percent of all Americans lived on farms or in small rural communities, and less than forty percent were city dwellers. Today approximately seventy percent of the people live in urban or suburban areas and the rural population has diminished to about thirty percent. Merry, *Minority Rule: Challenge to Democracy*, Christian Science Monitor, October 2, 1958, reprinted in 106 Cong. Rec. 13836 (daily ed.).

fused to give populous urban centers adequate authority to enable them to solve pressing local problems themselves.

Another result of the discrimination is that urban governments now tend to by-pass the States and enter directly into cooperative arrangements with the national government in such areas as housing, urban development, airports, and water pollution facilities. This multiplication of national-local relationships reinforces the debilitation of State governments by weakening the States' control over their own policies and their authority over their own political subdivisions. The 1955 Report of the U.S. Commission on Intergovernmental Relations (the Kestnbaum Commission, whose members were appointed by the President), cautioned (p. 40) that "the ultimate result * * * may be a new government arrangement that will break down the constitutional pattern which has worked so well up to now." See also United States Advisory Commission on Intergovernmental Relations, *Report: Apportionment of State Legislatures* (1962), pp. 24-27. After hearings on the Kestnbaum study extending over a period of three years, the House Committee on Government Operations emphasized in its final report that "there is a strong national interest in encouraging vigorous and responsible State and local government." H. Rep. No. 2533, 85th Cong., 2d Sess., p. 47.

New York's formula for systematically discriminating against voters in populous counties, without any purpose other than to increase the political power of rural voters, applies only to the apportionment of

the Senate. We doubt whether such unconstitutional classification could be saved by better over-all apportionment of the legislature, for here the evil is the use of irrelevant criteria, not an evil of degree. That question, however, need not be decided. The Assembly is also heavily weighted in favor of the same less populous areas and can be controlled by assemblymen chosen by only 37 percent of the people. The denial of equal protection in the apportionment of senators, therefore, is not corrected but augmented by the apportionment of the Assembly.

B. EVEN IF THE INEQUALITIES IN PER CAPITA REPRESENTATION IN THE SENATE ARE BASED UPON PERMISSIBLE CRITERIA, THE DISCRIMINATION IN BOTH HOUSES IS SO GROSS IN RELATION TO THE OBJECTIVE AS TO DENY EQUAL PROTECTION

In the Brief for the United States in *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, this Term, pp. 46–50, 60–90, we developed the argument in support of the general proposition that even though inequalities in *per capita* representation are the result of a rule having some tendency to achieve a permissible objective of legislative apportionment, the inequalities may nevertheless be so gross, in relation to the objective, as to be arbitrary and capricious. We also showed that even though room be assumed for considerable deviation from *per capita* equality of representation in one house of a legislature if the other is apportioned substantially according to population, nevertheless the strongest kind of showing would be required to justify serious inequalities in both houses. In New York neither house is apportioned in accordance with population.

Although the inequalities are less than in Maryland and Alabama, they are still too gross to be supported by the only available justification.

The New York Assembly is apportioned partly on the principle of *per capita* representation and partly to give representation by political subdivisions. Sixty-one of the 150 seats are distributed to each of the counties (except that Hamilton is joined with Fulton County) and the other 89 seats are distributed according to population. Art. III, § 5.[19] The result is not only grave inequality in *per capita* representation but also minority rule of the Assembly.

When the present apportionment was passed in 1953, it allowed, on the basis of the 1950 census, 37.1 percent of the citizens to elect a majority of the Assembly. The disparity between the most underrepresented and most overrepresented districts was about 12 to 1. The five populous counties with over six percent of the citizen population of the State had 57 percent of the citizen population but elected only 47 percent of the Assembly. Similarly, when the new apportionment is made pursuant to the existing rules under the 1960 census, 37 percent of the citizens will elect a majority of the Assembly. The

[19] In addition, every county with 1½ ratios, *i.e.*, one percent of the citizen population, is guaranteed two seats. Art. III, § 5. Since major fractions frequently result in the distribution of extra seats to counties and since there are now only 3 counties with 1½ to 2 ratios, this rule is now of little importance. See Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1, 14, 20.

As we have seen above (pp. 26–27, note 15), rules as to districting within counties contribute to the unequal representation.

disparity between the most underrepresented and the most overrepresented counties will be almost 13 to 1. The six populous counties (Nassau now has over six percent of the citizen population) will have almost 59 percent of the citizen population but will elect only 48 percent of the Assembly.[20]

The situation in the Senate is similar (see also pp. 17–20 above). The existing apportionment resulted, under the 1950 census, in 40.9 percent of the citizens electing a majority of the Senate. The discrepancies between the most overrepresented and most underrepresented districts was 2.4 to 1 and the five populous counties, with 57 percent of the citizen population, elected only 45 percent of the Senate. Under the new apportionment, 38 percent of the citizens will elect a majority of the Senate, the disparities between the most overrepresented and most underrepresented district will be at least 2.5 to 1, and the six populous counties with 59 percent of the citizen population will elect 45.6 percent of the Senate.

These figures, we believe, establish that the New York apportionment provisions, as specified in the Constitution and judicial decisions and uniformly applied by the legislature, result in gross inequalities

[20] As we noted above (p. 20, note 13), testing the existing apportionment under the 1960 census seems largely irrelevant. The apportionment was made by applying the required rules to the 1950 census. The New York Constitution requires that a similar reapportionment be conducted on the basis of the 1960 census. Nothing is shown as to New York's apportionment rules by matching the existing apportionment against census figures which had nothing to do with it, particularly when the apportionment must soon be redone.

in the representation of voters and give control of the legislature to a relatively small minority of the people. Considering the New York legislature as a whole (see our brief in *Maryland Committee for Fair Representation* v. *Tawes*, No. 29, this Term, pp. 72–73), neither house is apportioned on the basis of population; members elected by 37 to 41 percent of the citizen population constitute a majority of each house. Whether or not such inequality may be justified in one house, we submit that it cannot be justified in both. For the effect is to replace representation based on population with an entirely different standard, thus submerging the principles of voter equality and majority rule.

Moreover, New York offers no satisfactory explanation for the gross discrimination against citizens living in populous counties. We have seen (pp. 23–24) that any theory of giving adequate representation to political subdivisions or less populous areas is taken care of by the apportionment of the Assembly which guarantees a representative for each county. In our view, the method of apportioning the Senate adds nothing to those objectives or to any meaningful diffusion of representation (see pp. 24–25 above). But even if it be thought to add something, it does not add enough to justify the serious disparities that the apportionment in the Senate adds to the disparities in the House, with the consequence of depriving a majority of the people of control of either chamber.

We have also seen (pp. 27–28) that history is no

justification for the apportionment of the Senate because until 1894 it was apportioned on the basis of voters or population (excluding aliens, colored persons not taxed and, under the 1821 Constitution, paupers) and even then the present constitutional formula did not operate in so discriminatory a way as it does now. While the 1821 Constitution (Art. I, § 7) first guaranteed one representative per county (prior to this, apportionment was entirely on the basis of eligible voters), the result was not so discriminatory throughout the nineteenth century. The 1836 apportionment resulted, for example, in 42 percent of the population electing a majority of the Assembly, the 1857 apportionment in 44 percent, and the 1906 apportionment in 41 percent.[21] On the first and second occasion the Senate was apportioned according to population, and on the third the deviation in the Senate was comparatively small.

Nor, as we have seen (pp. 28–29), can the reapportionment be justified on the ground that a political remedy is available.

In short, both houses of the New York legislature substantially discriminate against citizens living in populous areas. New York offers no reasons justifying such substantial discrimination. The apportionment therefore violates the Fourteenth Amendment.

[21] While we have used total population without excluding aliens, colored persons not taxed, or paupers in computing these figures, the distinction is of relatively little significance. Indeed, the difference overrepresents the discrepancies from equality, since most non-citizens live in populous, underrepresented areas.

CONCLUSION

For the foregoing reasons, we respectfully submit that the decision of the district court should be reversed.

ARCHIBALD COX,
Solicitor General.
BRUCE J. TERRIS,
Assistant to the Solicitor General.
RICHARD W. SCHMUDE,
Attorney.

SEPTEMBER 1963.

APPENDIX

Sections 1 to 5 of Article III of the 1894 New York Constitution, as amended, 2 McKinney's Consolidated Laws of New York Annotated, Part 1, provide as follows:

> *Section 1.* The legislative power of this State shall be vested in the Senate and Assembly.
> *Section 2.* The senate shall consist of fifty members, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The assembly shall consist of one hundred nad fifty members. The assemblymen elected in the year one thousand nine hundred and thirty-eight, and their successors, shall be chosen for two years.
> *Section 3.* The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.
>
> District number one (1) shall consist of the counties of Suffolk and Richmond.
>
> District number two (2) shall consist of the county of Queens.
>
> District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.
>
> District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.
>
> District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth, twelfth and thirtieth wards of

the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street and Jackson street, to the East river and thence around the southern end of Manhattan Island, to the place of beginning, and also Governor's, Bedloe's and Ellis islands.

District number eleven (11) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Divi-

sion street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying

north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eighth avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West Fortieth street and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-

second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's island and Ward's island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nineteeth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river, to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Steuben and Yates.

District number forty-one (41) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland; and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie compris-

ing the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo, as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

Section 4. Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the state or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The legislature, by law, shall provide for the making and tabulation by state authorities of an enumeration of the inhabitants of the entire state to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite information as to the state at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the legislature,

by law, shall provide for such an enumeration of the inhabitants of such parts of the state only as may be necessary, which shall supersede in part the federal census and be used in connection therewith for such purposes. The legislature, by law, may provide in its discretion for an enumeration by state authorities of the inhabitants of the state, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom, or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session. At the regular session in the year nineteen hundred thirty-two, and at the first regular session after the year nineteen hundred forty and after each tenth year therefrom the senate districts shall be readjusted or altered, but if, in any decade, counting from and including that which begins with the year nineteen hundred thirty-one, such a readjustment or alteration is not made at the time above prescribed, it shall be made at a subsequent session occurring not later than the sixth year of such decade, meaning not later than nineteen hundred thirty-six, nineteen hundred forty-six, nineteen hundred fifty-six, and so on; provided, however, that if such districts shall have been readjusted or altered by law in either of the years nineteen hundred thirty or nineteen hundred thirty-one, they shall remain unaltered until the first regular session after the year nineteen hundred forty. Such districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade as above

defined, and shall at all times consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators, shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

The senate districts, including the present ones, as existing immediately before the enactment of a law readjusting or altering the senate districts, shall continue to be the senate districts of the state until the expirations of the

terms of the senators then in office, except for the purpose of an election of senators for full terms beginning at such expirations, and for the formation of assembly districts.

Section 5. The members of the assembly shall be chose by single districts and shall be apportioned by the legislature at each regular session at which the senate districts are readjusted or altered, and by the same law, among the several counties of the state, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the state, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assem-

bly than a county having a greater number of inhabitants, excluding aliens.

The assembly districts, including the present ones, as existing immediately before the enactment of a law making an apportionment of members of assembly among the counties, shall continue to be the assembly districts of the state until the expiration of the terms of members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be, of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the census or enumeration used as the population basis for the formation of such districts; and such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county containing a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district containing such town at any time on or before March first, nineteen

hundred forty-six. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, except a town having more than a ratio of apportionment and one-half over, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens. Nothing in this section shall prevent the divison, at any time, of counties and towns and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

Section 121 of 56 McKinney's Consolidated Laws of New York Annotated (1963 Supp.), defines the boundaries of the 58 Senate districts.

This provision is set out at pages 82-119 of Appellants' brief.

Section 122 and 123 of 56 McKinney's Consolidated Laws of New York Annotated (1963 Supp.), provide as follows:

> *Section 122.* The assembly districts of this state, as existing immediately before the enactment of this article, shall continue to be the assembly districts of the state until the expiration of the terms of the members then in office, except for the purpose of an election of members of assembly for full terms beginning at such expirations and except for the election of delegates to a state or judicial district convention, members of a state committee, members of a county committee or any other party office or position, and any public office to be filled for a term or terms commencing on or after or to continue beyond January first, nineteen hundred fifty-five.
>
> *Section 123.* Except as provided in section one hundred twenty-two, the number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:
>
> In the county of Albany, two.
> In the county of Allegany, one.
> In the county of Bronx, twelve.
> In the county of Broome, two.
> In the county of Cattaraugus, one.
> In the county of Cayuga, one.
> In the county of Chautauqua, one.
> In the county of Chemung, one.
> In the county of Chenango, one.
> In the county of Clinton, one.
> In the county of Columbia, one.
> In the county of Cortland, one.
> In the county of Delaware, one.
> In the county of Dutchess, one.
> In the county of Erie, eight.
> In the county of Essex, one.
> In the county of Franklin, one.
> In the counties of Fulton and Hamilton, one.
> In the county of Genesee, one.

In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, one.
In the county of Kings, twenty-two.
In the county of Lewis, one.
In the county of Livingston, one.
In the county of Madison, one.
In the county of Monroe, four.
In the county of Montgomery, one.
In the county of Nassau, six.
In the county of New York, sixteen.
In the county of Niagara, two.
In the county of Oneida, two.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, thirteen.
In the county of Rensselaer, one.
In the county of Richmond, two.
In the county of Rockland, one.
In the county of St. Lawrence, one.
In the county of Saratoga, one.
In the county of Schenectady, one.
In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, one.
In the county of Suffolk, three.
In the county of Sullivan, one.
In the county of Tioga, one.
In the county of Tompkins, one.
In the county of Ulster, one.
In the county of Warren, one.
In the county of Washington, one.
In the county of Wayne, one.
In the county of Westchester, six.
In the county of Wyoming, one.
In the county of Yates, one.

U. S. GOVERNMENT PRINTING OFFICE: 1893

LIBRARY
SUPREME COURT, U. S.

No. 20

Office-Supreme Court, U.S.
FILED
OCT 9 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

W.M.C.A., INC., *et al.*, Appellants,

v.

CAROLINE K. SIMON, *et al.*, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR LEONARD BERMAN, APPELLEE

FRANCIS J. MORGAN,
County Attorney and Attorney
for Appellee, Leonard Berman,
Office & P. O. Address:
County Office Building,
White Plains, New York.

IRVING LIBENSON,
Senior Assistant County Attorney.

INDEX

	Page
Statement	1
Argument	2
Conclusion	4

Case Cited

Baker v. Carr, 369 U. S. 186 (1962)	3

Statutes Cited

New York State Constitution, Art. 3, Sections 2, 3, 4, 5	4
State Law, Sections 120-123	4

Miscellaneous

Apportionment of State Legislatures, Advisory Commission on Intergovernmental Relations, December 1962	2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

W.M.C.A., INC., *et al.*,

Appellants,

v.

CAROLINE K. SIMON, *et al.*,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR LEONARD BERMAN, APPELLEE

Statement

Appellee, Leonard Berman, Chairman, Board of Supervisors, Westchester County, asks leave that the respective statements, summary, arguments, points, authorities and citations set forth in the brief submitted herein by the appellees, Caroline K. Simon, Secretary of State of the State of New York, and Louis J. Lefkowitz, Attorney General of the State of New York, be considered as though the same were recited herein in full, and that the same be treated and considered by this Court as the said appellee's position and argument on this appeal.

Argument

Much has been written and said concerning the apportionment of state legislatures.[1] We believe that the views expressed by Congressman L. H. Fountain on this subject are worthy of repetition here.[2]

> "I do not believe that the Fourteenth Amendment requires the apportionment of both Houses of a State legislature on a strict population basis. Moreover, a rigid interpretation of this kind would be undesirable in practice.
>
> "It is my view that 'equal protection of the laws' presumes and political equity requires that population be treated as the basic and principal determinant for apportioning seats in a State legislature. However, it should be recognized that special conditions in some States may justify reasonable deviation from a strict population basis in the apportionment of one House of a bicameral legislature. Each State has an interest in insuring that its legislative body is constituted in such a way as to assure the various segments of the State's population an adequate voice in the legislative process.
>
> "I cannot subscribe to a principle which would deny to the people of any State the right, if a majority of the electorate so decides in a statewide election, to take into account relevant factors other than population in apportioning one House of their legislature.
> "It is important in a representative democracy such as ours that the States have the opportunity to experiment with reasonable proposals for insuring the

---

[1] Apportionment of State Legislatures, Advisory Commission on Intergovernmental Relations, December, 1962.

[2] *Ibid.*, pages 75, 76.

> adequate representation of all segments of the population. A rigid interpretation of the Fourteenth Amendment setting up one, and only one, standard of representation would surely inhibit the future development of the democratic process, since there is no guarantee that what some may say is an appropriate apportionment formula today will be appropriate tomorrow. There is still much to be learned in the application of the theory of representative democracy, and our legal framework should be sufficiently flexible to permit the necessary experimentation for achieving representative democracy in practice."

Such statement is fully consistent with the views expressed in *Baker* v. *Carr*, 369 U. S. 186 (1962), that the Equal Protection clause has never been held to guarantee either mathematical identity or universal equality.[3]

In addition the statement of Congressman Fountain, *supra*, is judicially supported by the opinions of the three district court judges in this case (R. 294, 320, 323).

It is our view that the said opinions all indicate that the appellants here have failed to prove facts establishing the allegations of unconstitutionality set forth in the complaint. Under such circumstances appellants have not met their burden of showing invidious discrimination.

The "tests" for invidious discrimination are fully discussed and reviewed in the opinion of Judge Levet (R. 304-314). The findings in the two opinions below that

---

[3] "Universal equality is not the test; there is room for weighting" (Id. at 245).

* * *

"No one * * * contends that mathematical equality among voters is required by the Equal Protection Clause." (Id. at 258)

* * *

"Moreover, there is no requirement that any plan have mathematical exactness in its application." (Id. at 260)

New York State's system of legislative apportionment is not irrational nor arbitrary (R. 305-307; 321) are supported by the particular facts herein. The conclusions (R. 314, 315) arrived at by the Court below are in accord with the evidence presented upon the trial. In our judgment the legislative apportionment of the New York State Legislature,[4] is not violative of the provisions of the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, we submit that the three-judge court correctly determined the issues on the merits. We urge, therefore, that the judgment of the District Court dismissing the complaint on the merits be affirmed.

Respectfully submitted,

FRANCIS J. MORGAN,
County Attorney and
Attorney for Appellee,
Leonard Berman.

IRVING LIBENSON,
Senior Assistant County Attorney.

September 12, 1963.

---

[4] New York State Constitution, Art. 3, Sections 2, 3, 4, 5. Approved by vote of the people. State Law, Sections 120-123.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 22 1963
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

W.M.C.A. INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. McCAFFERTY,

Plaintiffs-Appellants,

against

JOHN P. LOMENZO, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES SECRETARY OF STATE AND ATTORNEY GENERAL

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney pro se and for
Appellee Secretary of State
80 Centre Street
New York 13, New York

IRVING GALT
Assistant Solicitor General

SHELDON KAAB
Assistant Attorney General

BARRY MAHONEY
Deputy Assistant Attorney General

of Counsel.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

INDEX

	PAGE
Statutes Involved	1
Questions Presented	4
Statement of the Case	5
A. The Pleadings	5
B. Prior Proceedings	7
C. The District Court Hearing	7
D. Opinions Below	10
ARGUMENT	12
Introduction and Summary	12
I. New York's formula for apportioning its Legislature is entirely consistent with the Fourteenth Amendment	23
A. The standard under the Fourteenth Amendment	24
1. The lesson of *Baker* v. *Carr*: Governments must be responsive to the popular will	24
2. The role of per capita representation	30
3. The role of other devices for assuring that Government rests on a consensus of the governed	32
4. The role of familiar standards under the equal protection clause	35
B. New York's formula is constitutional	36
1. Burden of proof	36
2. The New York formula provides for representation which is responsive to the popular will and at the same time prevents domination of the State by any one locality	38

PAGE

3. Even if the Constitution required substantial adherence to per capita representation, the New York formula would satisfy such a test 50

4. The New York formula does not result in any arbitrary distinctions or invidious discrimination 55

II. This case presents no occasion for the intervention of federal equity power 58

A. The lack of standards for a Court-imposed formula 59

B. The lack of compelling circumstances to justify a Court-imposed formula 63

III. The District Court properly rejected appellants' offers of proof 65

A. The offer to prove "intentional" discrimination 66

B. The offer to prove that the Legislature has "discriminated" against urban areas 67

C. The offer to prove that most "experts, agree with appellants' legal theories 69

Conclusion 70

CASES

Baker v. Carr, 369 U. S. 186 (1962) 7, 13, 22, 24, 27, 29, 30, 35, 37, 38, 55, 59, 62, 68, 69

Blaikie v. Power, 13 N. Y. 2d 134, —— N. E. 2d —— (1963) 32

Caesar v. Williams, 371 P. 2d 271 (Idaho 1962) 35

Carmichael v. Southern Coal Co., 301 U. S. 495 (1937) 68

Clark v. Uebersee Finanz-Korp., 332 U. S. 480 (1947) 69

PAGE

Colegrove v. Green, 328 U. S. 549 (1946) 62, 63

Davis v. Schnell, 81 F. Supp. 872 (S. D. Ala.), *aff'd* 336 U. S. 933 (1949) 67

Davis v. Synhorst, 217 F. Supp. 492 (S. D. Iowa 1963) 68

Everson v. Board of Education, 330 U. S. 1 (1947) .. 68

Ferguson v. Skrupa, 372 U. S. 726 (1963) 27

General American Tank Car Corp. v. Day, 270 U. S. 367 (1926) 68

Gray v. Sanders, 371 U. S. 368 (1963) 14, 24, 26

Jackman v. Bodine, 78 N. J. Super. 414, 188 A. 2d 642 (1963) 35

Ker v. California, 374 U. S. 23 (1963) 29

Kotch v. Board of Pilot Comm'rs, 330 U. S. 552 (1947) 67

Lassiter v. Northampton Co. Bd. of Elections, 360 U. S. 45 (1959) 67

MacDougall v. Green, 335 U. S. 281 (1948) 15, 25, 33, 34

Mann v. Davis, 213 F. Supp. 577 (E. D. Va. 1962), *prob. jurisd. noted*, 374 U. S. 803 (1963), No. 69, Oct. T. 1963 ..... 31, 36, 38

Maryland Comm. for Fair Representation v. Tawes, 229 Md. 406, 184 A. 2d 715 (1962), *prob. jurisd. noted*, 374 U. S. 804 (1963), No. 29, Oct. T. 1963 31

Matter of Fay, 291 N. Y. 198, 52 N. E. 2d 97 (1943) .. 45

McGowan v. Maryland, 366 U. S. 420 (1961) 37, 67

Metropolitan Casualty Ins. Co. v. Brownell, 294 U. S. 580 (1935) 37

Morey v. Doud, 354 U. S. 457 (1957) 16, 36, 45

PAGE

Sims v. Frink, 208 F. Supp. 431 (M. D. Ala. 1962), *prob. jurisd. noted*, 374 U. S. 802 (1963), No. 23, Oct. T. 1963 31

United States v. Carolene Products, 304 U. S. 144 (1938) 14, 29, 38

United States v. Classic, 313 U. S. 299 (1941) 68

United States v. Des Moines Ry., 142 U. S. 510 (1892) 66

United States v. Saylor, 322 U. S. 385 (1944) 68

CONSTITUTIONS AND STATUTES

Constitution of the United States:

Art. I, § 2 34
Art. I, § 3 34

New York State Constitutions:

Constitution of 1777 40
§ IV 40
§ V 40
§ X 40
§ XI 40
§ XII 40

Constitution of 1821 41
Art. I, § 2 41
Art. I, § 5 41
Art. I, § 7 41

Constitution of 1846 41
Art. III, § 2 41
Art. III, § 3 41
Art. III, § 4 41
Art. III, § 5 41

PAGE

Constitution of 1894
Art. III, § 2 ..... 2, 5
Art. III, § 3 ..... 2, 5
Art. III, § 4 ..... 2, 5
Art. III, § 5 ..... 2, 5
Art. IX, § 9 42
Art. XIX, § 2 49

New York State Statutes:

Conservation Law:
§ 205 42
§ 879 42

Correction Law:
§ 14-a 42

County Law:
Art. 6-A 43
§ 219 42
§ 299-w 42
§ 301-309 42

State Defense Emergency Act 42

Education Law:
§ 1104 42
§ 1113 42
§ 4403 42
§ 6301 42
§ 6302 42
§ 6304 42

Highway Law:
§ 12 42
§ 112 42
§ 112-a 42
§ 279 42

PAGE

Mental Hygiene Law:
Art. 8-a 42
§ 191-a 42

Public Health Law:
§ 608 42
§ 620 42
§ 636 42
§ 650 42
§ 660 42

Social Welfare Law:
§ 65-73 42
§ 74-75a 42
§ 153 42
§ 154 42
§ 257 42
§ 409 42

State Law:
§ 120 4
§ 121 ..... 4, 5
§ 122 4
§ 123 ..... 4, 5
§ 124 4

MISCELLANEOUS

Amicus Brief for the United States, *Baker* v. *Carr*. 47

Bickel, *Reapportionment and Liberal Myths*, 6 Commentary 483 (1963) 70

David and Eisenberg, Devaluation of the Urban and Suburban Vote (1961) 32, 51, 52, 63

DeGrazia, Essay on Apportionment and Representative Government (1963) 67, 68, 70

PAGE

Dixon, *Apportionment Standards and Judicial Power*, 38 Notre Dam Law. 367 (1963) 31, 54, 70

Drake, *History of the County Law*, Introduction to (McKinney's) N. Y. County Law (1950) 40

Goldberg, *The Statistics of Malapportionment*, 72 Yale L. J. 90 (1962) 31

Israel, *On Charting a Course Through the Mathematical Quagmire*, 61 Mich L. Rev. 107 (1962) 34, 70

Lewis, *Legislative Apportionment*, 71 Harv. L. Rev. 1057 (1958) 43

Lincoln, The Constitutional History of New York, vols. 1 (1905) and 3 (1906) 39, 40

Lucas, *Legislative Apportionment and Representative Government*, 61 Mich. L. Rev. 711 (1963) 29, 70

McCloskey, *Foreword: The Reapportionment Case*, 76 Harv. L. Rev. 54 (1962) 27, 28, 70

Munger and Straetz, New York Politics (1960) 46, 53, 65

National Municipal League, Compendium on Legislative Apportionment (2d ed. 1962) 31, 51

Neal, *Baker* v. *Carr: Politics in Search of Law*, 1962 Sup. Ct. Rev. 252 (1962) 29, 34, 70

Note, 72 Yale L. J. 968 (1963) 36, 65

1962-63 N. Y. Legis. Man. 49, 54

1961-62 N. Y. Legis. Man. 54

1959 N. Y. Legis. Man. 54

1957 N. Y. Legis. Man. 54

1956 N. Y. Legis. Man. 54

PAGE

The New York Times:
Sept. 7, 1957 50
Sept. 24, 1957 50
Oct. 29, 1957 50

Revised Record of the Constitutional Convention of 1894 (1900) 43, 45, 46, 47, 48

Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581 (1962) 3

Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1 (1962) 4

Sindler, *Baker* v. *Carr: How to 'Sear the Conscience'' of Legislators*, 72 Yale L. J. 23 (1962) 70

United States Advisory Comm. on Intergovernmental Relations, Apportionment of State Legislatures (Report A-15) (1962) 46, 56

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

W.M.C.A. INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY,

Plaintiffs-Appellants,

against

JOHN P. LOMENZO, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, WILLIAM J. LEONARD, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES SECRETARY OF STATE AND ATTORNEY GENERAL

Statute Involved

The relevant state constitutional and statutory provisions are set forth in Appendix A of appellants' brief. We summarize them here briefly for the convenience of the Court.

The system for apportioning seats, in both the State Senate and Assembly, is contained in N. Y. Const. Art. III, §§ 2-5. While more than one Senate or Assembly District can be contained within the whole of a single county, and while a given Senate district may consist of more than one county, no county border line can be broken in the formation of either type of district.

The Senate districts are created primarily on the basis of citizen population. The Constitution provides that each district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact a form as practicable. A "ratio" is determined by dividing the citizen population of the State by 50 (the minimum number of Senators); Senate districts are then formed by combining or dividing counties so that each district contains approximately this number (the "ratio") of citizens, subject to four further provisos: (1) when any county entitled to more than three Senators becomes entitled to more Senators than it had in 1894, when the apportionment formula was adopted, the Senate is enlarged from its minimum size (50) by the number of these additional Senators; (2) no county can have four or more Senators unless it has a full population ratio for each; (3) no county shall have more than one third of all the Senators; and (4) no two counties that are adjoining or separated by a public waterway shall have more than half of all the Senators. (The last two of these provisos are inoperative, since no counties are entitled to that number of Senators.)

In order to implement these rules mechanically, the Legislature first apportions Senate seats to the most populous counties and then distributes the remainder of the seats to the other counties. Thus, it begins by assigning seats to counties which contain a citizen population equal to or greater than three full ratios, *i.e.*, six percent of the total citizen population of the State. Each such county is entitled to one seat for every full ratio. Next, it

calculates the total size of the Senate by determining the increase in representation since 1894 for each such county, and adding the total increase to the minimum number of 50 Senators. Then, it apportions the remaining seats among the counties according to their population. See Silva, *Apportionment in New York*, 30 Fordham L. Rev. 581, 627 (1962).

The total number of Assemblymen is fixed at 150, with every county except Hamilton (which shares one Assemblyman with Fulton County) entitled to one Assemblyman. Sixty-one seats are thus accounted for. The remaining 89 seats, however, are apportioned in this manner: The citizen population of the State is divided by the total number of Assemblymen (150), and the quotient thus achieved becomes the "ratio". Every county whose citizen population equals 1½ times the "ratio" is entitled to a second Assemblyman. The rest of the seats are then apportioned among those counties with citizen populations greater than twice the "ratio". Seats apportioned on remainders are apportioned in the order of highest remainders, with the proviso that no county shall have more Assemblymen than a county with a larger citizen population.

The mechanical implementation of the Assembly apportionment rules, unlike the Senate apportionment rules, requires that seats first be apportioned to the least populous counties. First, one seat is apportioned to each county with less than 1½ ratios and two seats are apportioned to every other county in the state. Next, two ratios are deducted from the citizen population of each county having at least that number of citizens, and the results thus obtained are added. The sum is divided by the number of undistributed seats, and the quotient is then used as a basis for apportioning seats to these counties. The citizen population of each of these counties, less two ratios, is divided by the quotient previously obtained, and each such county receives a number of seats equal to the

new quotient. The remaining seats are distributed in order of highest remainders. See Silva, *Apportionment of the New York Assembly*, 31 Fordham L. Rev. 1, 24, 28 (1962).

The most recent redistricting pursuant to these provisions went into effect in 1954. See New York State Law §§ 120-24.

Questions Presented

1. Does the Constitution require that both houses of a state legislature be apportioned according to a strict population standard without regard to any other factors?

2. Does the Constitution require that one house of a state legislature be apportioned according to a strict population standard whenever the other house is apportioned according to a standard combining population with a guarantee of at least one representative per county?

3. Even if the Constitution requires substantial adherence to per capita representation in a bicameral legislature, does it prohibit a guarantee of at least one representative per county in one house and a rule in the other house providing that (a) representatives apportioned to the most populous counties must be apportioned only on a full ratio and that (b) increased representation of the most populous counties shall result in an increase in the size of the entire membership so as not to diminish the aggregate representation of the other counties?

4. Should a federal court of equity impose a strict rule of per capita representation on a state which, pursuant to its own constitution, has apportioned seats in its legislature according to a standard combining population with other factors in an effort to assure that all citizens have an equal voice in government?

5. Did the District Court err in excluding evidence that (1) the New York apportionment formula was "intended" to discriminate against urban residents, (2) the Legislature has "discriminated" against urban areas and (3) most "experts" agree with appellants' legal theories?

Statement of the Case

A. The Pleadings.

Appellants brought this action seeking a declaration that New York Const. Art. III, §§ 2-5, and its implementing statutes, State Law §§ 121, 123, violate the Fourteenth Amendment of the Constitution of the United States and an order enjoining defendants from enforcing or executing these provisions (R. 11-12). Appellants named as defendants various state and local officials who they alleged were under a duty to administer and enforce the statute (R. 3-4). These officials included the Attorney General and Secretary of State* of New York, on whose behalf this brief is filed.

Appellant W.M.C.A., Inc. alleged that it is a New York corporation having its principal place of business in New York County (R. 2), and the six individual appellants alleged that they are taxpayers and voters in four of New York City's counties (Bronx, Kings, New York, Queens; the fifth county, Richmond, is not represented) and in neighboring Nassau and Suffolk Counties (R. 2). They claim that the challenged provisions of the State Constitution violate the Fourteenth Amendment "because the apportionment formula contained therein results, and must

---

* When this action was begun, Caroline K. Simon was Secretary of State of the State of New York and was named as a party defendant. After this appeal was taken, John P. Lomenzo became Secretary of State and, accordingly, we have revised the title of this action to indicate that fact. See Rule 48, Revised Rules of the Supreme Court of the United States.

necessarily result * * * in a grossly unfair weighting of both houses in the State Legislature in favor of the lesser populated rural areas of the state to the great disadvantage of the densely populated urban centers of the state" (R. 6). In particular, they complain of the rules for apportioning the Senate which provide that any county with more than three Senators may obtain additional Senators only on a full ratio and that the total number of Senators is increased by any increment in the representation of the more populous counties over that of 1894 (R. 6). They also complain of the rule which guarantees at least one Assemblyman to each county (except Hamilton, which is joined with Fulton) (R. 6). They allege that these provisions were invalid at the time of their adoption in 1894 and that failure to revise them in light of "shifts of population to urban areas" have "aggravated" the violation of their rights (R. 10-11). They also charge that as a result of "malapportionment," the Legislature has "unjustly" allocated taxes and revenues, and that they have been subjected to "taxation without adequate representation" (R. 9). Finally, they allege that "the legislature is controlled and dominated by persons elected by a minority of citizens who may be expected to preserve the status quo which perpetuates their domination" (R. 10) and that, unless a judicial decree were forthcoming, the present constitutional provisions could not be amended prior to the then-forthcoming 1962 elections either by the Legislature or by a constitutional convention (R. 10).

The state officials named as defendants answered the complaint* denying all its material allegations, except those

---

* The pleadings herein referred to were filed after this Court remanded the case to the District Court. When the action was first begun, all the defendants, except those represented by the Corporation Counsel of the City of New York, moved to dismiss the complaint. The County Executive of Nassau County, who had joined in the motions to dismiss, was replaced before the remand by a new County Executive who espoused appellants' position (R. 116-17).

relating to the actual provisions of the state constitution and statutes and to various statistical items such as figures for citizen population and representation in the Legislature (R. 120-22). They also asserted several affirmative defenses, including (1) the right of the People to amend the state constitution by convention, without the approval of the Legislature, (2) the refusal of the People to alter the present apportionment formula, (3) lack of equity and (4) lack of standing in the corporate plaintiff (R. 119-20).

The local officials represented by the Corporation Counsel of the City of New York and the County Attorney of Nassau County admitted the allegations of the complaint and joined in the prayer for relief (R. 87-88, 116-17). All the other defendants filed general denials and asked for dismissal of the complaint (R. 117-18, 123-24).

B. Prior Proceedings.

The three-judge District Court, prior to this Court's decision in *Baker* v. *Carr*, 369 U. S. 186 (1962), had unanimously granted appellees' motions to dismiss the complaint (R. 88-114). 202 F. Supp. 741 (1962). On appeal, this Court held that the "well-established practice of a remand for consideration in the light of a subsequent decision" applied. 370 U. S. 190, 191 (1962). It therefore vacated the judgment of the District Court and remanded the case for reconsideration in light of the *Baker* decision, noting that "the court below should be the first to consider the merits of the federal constitutional claim, free from any doubts as to its justiciability and as to the merits of alleged arbitrary and invidious geographical discrimination." *Ibid.*

C. The District Court Hearing.

On remand, the District Court ordered appellees to answer or otherwise move with respect to the complaint by July 30th, and set the case down for hearing on August 1, 1962 (R. 114-15).

At the hearing, appellants introduced various statistical tables (Pl. Exhs. 1-7, R. 180, 243-49) showing the arithmetic application of the apportionment formula, and both sides introduced a stipulation (R. 164, 226-42) containing population statistics and the result of past, current and projected apportionments. The tables and stipulation were admitted into evidence.

Appellants and the parties aligned with them also offered to present evidence as to three other matters. First, they offered to show that each rule limiting the representation of New York City was "intentionally devised" to do that (R. 143). The Court rejected this offer on the ground that the motivation of the constitutional convention was irrelevant (R. 145). Second, they offered to show that appellants suffered "actual injury" under the "challenged malapportionment system" from "discriminat[ory]" legislation (R. 142, 147). This offer, too, was excluded (R. 148). Third, they offered to produce "expert" testimony as to whether the present apportionment was "fair and equitable" (R. 129). The Court held that it is for the Courts, not the witnesses, to determine the legality of an apportionment and rejected the offer (R. 129).

The salient statistics revealed by appellants' exhibits, the parties' stipulation and the census report appended to appellants' complaint (R. 32-86) summarize the results of New York's apportionment. They show that:

1. According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the State's total citizen population of 16,246,786 (R. 227-29, 234). They are represented by 72 Assemblymen and 28 Senators—48.0% of the Assembly and 48.3% of the Senate (R. 227-29). When the Legislature reapportions the State on the basis of the 1960 census figures, these same counties will have 26 Senate seats and 69 Assembly seats, 45.6% and 46.0%, respectively, of the two houses (R. 234, 237).

2. The ten most heavily populated counties in the State (Kings, Queens, New York, Bronx, Nassau, Erie, Westchester, Suffolk, Monroe and Onondaga) have under the current apportionment 38 Senate seats, 65.5% of all the Senate, and 93 Assembly seats, 62.0% of all the Assembly (R. 227-29); when the Legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 Senate seats and 92 Assembly seats, 64.9% and 61.3%, respectively, of the two houses (R. 234, 237). They have a citizen population of 11,937,406—73.5% of the total citizen population of the State (R. 234). Each of these counties is at least 72% urban, and most are over 90% urban (R. 61).

3. The five counties making up New York City have, under the current apportionment, 25 Senate seats, 43.1% of all the Senate, and 65 Assembly seats, 43.3% of all the Assembly (R. 227); when the Legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 21 Senate seats and 56 Assembly seats (R. 234, 239), 36.8% and 37.3%, respectively, of the two houses. They have a citizen population of 7,420,631, or 45.7% of the total citizen population of the State.

4. The nine counties comprising the New York City standard metropolitan statistical area* (New York City plus Nassau, Rockland, Suffolk and Westchester Counties) (R. 75) had, according to the 1960 census, a citizen population of 10,260,557, or 63.2% of the total citizen population of the State (R. 227). They are represented by 81 Assemblymen and 32 Senators—54.0% of the Assembly and 55.2% of the Senate (R. 227). When the Legislature reapportions New York on the basis of the 1960

---

* A standard metropolitan statistical area consists of the central city and contiguous counties which "are essentially metropolitan in character and are socially and economically integrated with the central city" (R. 42).

census figures, these same counties will have 78 Assembly seats and 30 Senate seats—52.0% and 52.6%, respectively, of the two houses (R. 237, 239-40).*

Since the validity of various other comparisons—such as ratios of "underrepresentation"—are disputed, we reserve them for the argument section of the brief.

D. Opinions Below.

After considering the evidence, the three-judge District Court unanimously dismissed the complaint on the merits, holding that appellants failed to meet the burden of showing invidious discrimination. 208 F. Supp. 368 (1962).

Judge LEVET wrote the principal opinion of the Court (R. 295-319). He first pointed out that New York's apportionment formula is far from arbitrary or irrational. New York gives primary weight to population in both houses of the legislature. It departs from a strict population standard only in that (1) it guarantees each county at least one assemblyman (as does the federal formula for apportioning members of the House of Representatives to the states), (2) it provides that densely populated counties, already having three or more senators, may gain an additional senator only on each full ratio, and (3) it provides that such additional senators are added to the total membership of the Senate so that they need not be taken from the less densely populated counties (R. 305-07). Second, Judge LEVET noted the historic significance and importance of county government in New York and the

---

* The figures for the reapportionment under the 1960 census have been obtained without crediting Rockland County with a Senator. Under the existing apportionment, Rockland and Orange together form one Senate District, and Rockland, with a citizen population of 131,834 according to the 1960 census, will surely be part of a multi-county district under the reapportionment. Richmond County, which has a Senator of its own under the existing apportionment, will undoubtedly get one again under the reapportionment—its 1960 citizen population is 216,764.

emphasis in past apportionment formulas on preserving county representation in the legislature (R. 307-311). He concluded that the present formula is "fitted to the nature of the governmental development of the Empire State" (R. 311). Third, he emphasized that a majority of the people had refused to change this formula. In fact, they refused to convene a constitutional convention—in which the urban majority would have been in overwhelming control—despite the fact that advocates of a new apportionment system, including the then-governor of the State, urged them to do so (R. 312). Fourth, Judge LEVET pointed out that the ten most populous counties in the State control both houses of the Legislature; and he warned that senate and assembly districts, already oversized in the sparsely populated areas, would grow so large that there would be virtually no contact between legislator and constituent unless a strict population standard could be tempered by geographical considerations (R. 312-13). Finally, he noted that a court should be especially conscious of traditional presumptions of constitutionality when it is dealing with basic provisions of a state constitution (R. 314). He concluded, in light of these observations, that New York's legislative apportionment is free from constitutional taint (R. 314). Judges RYAN and WATERMAN concurred in Judge LEVET's findings and conclusions (R. 320-23).

Judge RYAN also wrote a separate opinion, in which he observed that the electorate could change the present system by convening a constitutional convention—but chose not to do so (R. 322). He emphasized that although it is clear that the equal protection clause does not prevent a state from giving some consideration to factors such as the interests of counties, geography, and concentration of political power, "all that plaintiffs have illustrated is that the apportionment is not based solely on population" (R. 321).

ARGUMENT

Introduction and Summary

The instant case presents the fundamental question of whether the Fourteenth Amendment requires a state to apportion its legislature according to a strict population standard without regard to any other factors.

In apportioning its state legislature, New York follows a formula which is written into its constitution and has been part of its fundamental law since 1894. This formula stresses per capita representation in both houses of the legislature, but also requires that certain other factors be taken into account in apportioning seats. As the Solicitor General points out in his brief amicus curiae in this case, the New York apportionment is not subject to attack as creating gross inequalities among voters without rhyme or reason. There is no "crazy-quilt" pattern or manifestly capricious discrimination. The apportionment is systematic and is kept reasonably current.

New York ranks twelfth among all the states of the Union in its adherence to per capita representation. It departs from that standard only in three respects. First, it guarantees at least one representative for each county in the Assembly. Second, it provides that seats in the Senate which are apportioned to the most populous counties may be apportioned only on a full ratio. Third, it provides that any increase in the Senate representation of the most populous counties since 1894, when the present apportionment formula was devised, shall result in an increase in the size of the entire membership of the Senate so as not to diminish the aggregate representation of the other counties. The question presented, therefore, is whether these departures from a per capita standard infringe the Fourteenth Amendment.

I

A. Although New York's apportionment formula emphasizes per capita representation in both the Senate and the Assembly—and it could be sustained even under a test which demands close adherence to a per capita standard—we do not believe that there is any necessary connection between that standard and the mandates of the Fourteenth Amendment. To be sure, our democratic tradition demands that all men have an equal voice in the councils of government—and this Court's decision in *Baker* v. *Carr*, 369 U. S. 186 (1962), has enabled the federal Courts to enforce the guarantees of the Fourteenth Amendment wherever it is clear that a state departs from this important principle. However, there is no warrant for espousing a doctrine of per capita representation as the sole test of equality. Obviously, there are factors other than per capita representation which determine whether one citizen has a voice in the legislature "equal" to that of another citizen. The problem of "equality" is complex because a voter in one constituency may, for various reasons, be better or less able to influence his legislator than would a voter in another district; therefore, he might have a greater or lesser voice in the legislative process than his neighbor in another constituency. This inequalty might arise, for example, because a citizen who desires to make his wishes known on a topic affecting the government of his county does not find a ready voice through his legislator since that county is only part of a multi-county legislative district. It might also arise because he lives in a sparsely populated district which covers so large an area that its legislator may be called upon to represent a great variety of diverse interests, often opposed to each other, and may have to choose which of these interests he will espouse. The problem of "equality" is thus far different in the area of legislative apportionment, where one is concerned with the problem of "equalizing" political power between residents of different constituencies, from

what it is in a state-wide election or any other situation where one is concerned only with "equalizing" power between residents of the same constituency. *Cf. Gray* v. *Sanders*, 371 U. S. 368 (1963). Per capita representation alone is not a guarantee of equality in the former situation and, in fact, it may often result in gross inequalities in the legislative process.

The central command of the Fourteenth Amendment with respect to apportionment is that governments must be responsive to the popular will. This standard alone commands the backing of our democratic traditions, and it is entirely appropriate to measure the structure of a state legislature against this principle. Thus, we believe that any inquiry under the Fourteenth Amendment into the apportionment of a state legislature should begin by ascertaining whether that apportionment is grossly at odds with the standard set by the last expression of the popular will. If, for example, a legislature does not adhere to the standards set down by its own state constitution, and it has failed to reapportion the state over a long period of time despite significant population shifts in that interim, a court might well be justified in striking down the existing apportionment. This standard would be fully in line with past decisions of this Court. First, it would subject to particular scrutiny actions of the state legislature which defy the popular will and therefore clog the processes of political change. *Cf. United States* v. *Carolene Products Co.*, 304 U. S. 144 (1938). Second, it would recognize that there is a great likelihood that an apportionment which departs from existing standards under the state constitution will reflect no coherent policy but simply arbitrary action which has long been condemned under the Fourteenth Amendment. This standard—although only a starting point of inquiry—would dispel the notion that per capita representation is the sole way to guarantee all voters equal access to the legislature and would focus attention on the basic principle that the government of a state must rest not on the

whims of a legislature which has locked itself into power, but on the consent of the governed.

Because "equality" is so elusive in this area—and because its pursuit often leads to deviation from per capita representation—an overwhelming majority of our states depart from a per capita standard in both houses of their legislature. For example, in Alabama, a legislative majority may be formed in the Senate from constituencies comprising 25.1% and, in the lower house, 25.7% of the state population. In Maryland, such a majority can be formed in each house, from constituencies containing 14.2% and 25.3%, respectively, of the population.

The many other traditional factors which go into an apportionment play no less important a role than does the per capita standard. First, it is often desirable to guarantee each county a minimum of one representative in a state legislative chamber, so that the voters of that county may have a voice in the legislature on matters affecting the relation of that county with the state. Second, it may be desirable to limit the effect of an existing apportionment caused by rapid population shifts, so that legislative districts may not become so large as to lose contact between the representative and his constituency and to forsake any hope that a district will reflect community of interest among its electorate. Third, it may be necessary to place some reasonable limit upon the representation of the larger counties of the state, so that the interests of voters in the smaller county will not be ignored. *Cf. MacDougall* v. *Green*, 335 U. S. 281 (1948). These factors may appropriately be considered, along with per capita representation, in each chamber of the legislature.

Of course, the legislature of a state is not entirely free of restraint in the apportionment process. If an apportionment is a "crazy quilt" or if it implements an impermissible state policy, it should be struck down under

the familiar principles of the Fourteenth Amendment. An arbitrary apportionment will most often arise where the legislature fails to reapportion over a long period of time or where it either is not bound by its state constitution to follow any set apportionment formula or, although bound by a principled formula written into its constitution, it ignores that formula and enacts a seemingly inexplicable apportionment. The situation is vastly different when a legislature consistently follows a principled formula for apportionment written into its own constitution. The presumption of constitutionality is then strongest and the apportionment must be upheld unless it is "without any reasonable basis". *Morey* v. *Doud*, 354 U. S. 457 (1957).

B. Appellants bore the burden of showing that New York's formula violates the constitution. If, as we firmly believe, per capita representation is not the sole permissible factor in an apportionment system, appellants could not satisfy their burden simply by showing that the New York formula takes into account other factors to mitigate some of the less fortunate effects of a per capita standard. If the burden of proof would shift upon a demonstration of mere statistical disparities from per capita representation, a plaintiff could succeed in making a prima facie case in virtually every state of the union. Although every state apportionment is entitled to a presumption of constitutionality, the presumption is especially strong where, as in New York, the apportionment is based on the formula set forth in the state constitution, since the basis for apportionment is clearly set forth and there is no need to call upon the state to explain the rationale of its actions.

Although New York's formula adheres substantially to a per capita standard in both houses of the Legislature, it combines this factor with three other criteria—none of which can conceivably be categorized as irrational. First, New York recognizes that many of the interests which a citizen may wish to assert in the legislative process are

interests which touch on his relation to the government of his county as well as the state. Each of New York's 62 counties plays a vital role in state government and has done so throughout the State's history. One of the functions of a legislator is, therefore, to serve as a liaison between the county and state governments. Unless there were some guarantee of minimum representation to the electors of a single county, the less densely populated counties would be grouped together in districts where the necessary liaison function would disappear. Thus, the New York constitution guarantees at least one Assemblyman to each county and places certain limitations on the per capita standard in the Senate which tend to restrict the number of multi-county Senatorial districts and thus allow many of the less populated counties to have their own Senator. Second; New York has recognized that the physical size of a constituency may have a significant bearing on the voter's capacity to influence the legislative process. If a strict population standard governed apportionment in this state, districts would become so large that a legislator and his constituency might be inaccessible to one another and a district would cease to represent any significant community interest among its voters. To meet this problem, New York has provided that additions to the representation of the more populous counties since 1894 should be added to the total size of the Senate instead of being taken from the less populated counties. In this way, it restricts the size which a district in a sparsely populated area must cover. The other provisions of the formula also tend to further this same goal by eliminating multi-county districts in the Assembly and by limiting the representation of the more populous counties in the Senate. Third, New York has taken into account the heavy concentration of population and political power in its cities—particularly New York City—which gives these areas power in the Legislature far beyond that which would accrue to it even in terms of a strict per

capita standard. In order to limit the concentration of such power, New York has provided that no county having more than three Senators may gain an additional Senator, save on a full population ratio. The provisions for one Assemblyman per county and additions to the total size of the Senate also tend to further that goal. These three considerations, along with the basic per capita standard adhered to by the New York formula, have been retained by the people of the State in their constitution since 1894. Although the counties supposedly discriminated against have had an opportunity to change these provisions by a constitutional convention, they have not done so, and, in fact, there is every indication that all the people of the State are well satisfied with the balance which has been achieved.

The most striking fact about the New York apportionment, however, is not that it takes into account these factors—but that it adheres more strictly to a per capita standard than do three-quarters of the other states of the union. New York ranks twelfth among the states in its adherence to per capita representation. In fact, the population figures themselves conclusively refute appellants' allegations that New York discriminates against its densely populated urban areas. According to the 1960 census, the six counties represented by the six individual plaintiffs here have 56.2% of the total citizen population of the State, and control 48.0% of the Assembly and 48.3% of the Senate. In the projected apportionment, they will control 45.6% and 46.0%, respectively, of the two houses. The ten most heavily populated counties in this state, with 73.5% of the total citizen population, now have 65.5% of the seats in the Senate and 62.0% of the seats in the Assembly. In the projected apportionment they will have 64.9% and 61.3%, respectively, of the two houses. Each of these counties is very heavily urban. Indeed, it is difficult to see how the New York apportionment could be more in line with a per capita standard and still take into account other

considerations which are just as necessary to guarantee each citizen an equal voice in the Legislature.

Appellants' argument that New York's apportionment constitutes a "crazy quilt" adds nothing to the strength of their position. For the most part, they merely chafe at the necessity for drawing a line at some point to determine the number of representatives to be allotted to a county and they argue that it is irrational to give one county more representatives than another when it has only slightly greater population. This kind of argument, of course, merely demonstrates the weakness of any attempt to show arbitrariness in the New York formula. Appellants' "crazy quilt" argument does, however, focus on two points which are worthy of discussion. First, they maintain that the Senate apportionment is irrational because it does not show any consistent bias in favor of either rural or urban counties. This does not, of course, demonstrate irrationality—but we maintain that it does demonstrate that appellants themselves recognize that they have utterly failed to prove the allegation of pro-rural bias contained in their complaint. Second, appellants argue that the rules for districting the Assembly are arbitrary because they provide that each Assembly district must be wholly contained within one Senate district, so that one Senate district in a given county may contain two Assembly districts while an adjoining Senate district in the same county contains only one Assembly district. We believe that the pleadings and the record in this case raise no challenge to the districting rules and, therefore, that they are not properly before this Court. However, even if they were at issue, there would be no merit to appellants' contentions. The rule for drawing district lines in the Assembly is an obviously justifiable attempt to curb gerrymandering by local authorities (who draw Assembly district lines) and also to coordinate the constituencies of the two houses. The New York constitution is, in fact, anything but arbitrary. It has established a systematic plan for apportioning legislative seats which

gives heavy emphasis to per capita representation, while relying also on other perfectly rational factors which tend to promote equal access by all citizens to the legislative process.

II

A. Even if appellants had succeeded in presenting a colorable constitutional claim, relief should be denied here since there are no standards by which an equity court could fashion a decree in this action. There is no sure guide to how much weight must be placed on per capita representation, in contradistinction to other legitimate factors which traditionally have been thought necessary to guarantee each voter an equal opportunity to influence the legislative process. It is beyond any standard of principled adjudication to determine the extent to which these other factors may be included in an apportionment. We further believe that it is unwise to strike down, on the strength of some abstruse notion of per capita representation, a legislative apportionment system which is delicately intermeshed with other parts of the governmental process. The apportionment of one chamber of the Legislature is intimately tied to that of the other and also to the executive branch of the state and to its entire political structure. To tamper with this complex inter-relationship may indeed be to impose a cure which would be worse than the disease. The problem as it arises here is even more acute than it is in the ordinary case involving the exercise of a court's equitable discretion. Unless a decree can be drafted which is sufficiently precise to advise a legislature of its rights and duties under the Fourteenth Amendment, the politics of the state would be left in a hopeless tangle.

B. Even if a court were to undertake—in the face of all these difficulties—to decree substantive standards for apportionment in excess of those provided by the state's own constitution or by the Fourteenth Amendment's familiar prohibitions against arbitrariness, it is quite obvious that

it should do so only in the most compelling circumstances. The New York situation presents no such occasion for the exercise of federal equity power. New York adheres substantially to a per capita standard in both houses; in fact, it ranks twelfth in the nation in its conformity to such a standard. Its urban counties—which appellants claim are dominated under the current apportionment by other less populated "rural" neighbors—have a clear majority of the State Legislature. The citizens of the most populated counties have had ample opportunity to change the present apportionment system by convening a constitutional convention. Finally, New York City and its metropolitan area, by virtue of sheer size, wield an institutional power in the State that cannot be measured solely in terms of its representation in the Legislature or even in terms of its influence on state-wide elections. Looking to the governmental process in its entirety, it is apparent that the New York system is responsive to all segments of the electorate and that there is no warrant for the exercise of federal equity power.

III

A. The District Court properly rejected appellants' offer to show that the delegates to the 1894 Convention "intentionally" discriminated against urban voters and, in particular, the voters of New York City, in framing the apportionment provisions here challenged. It is well established that such proof is utterly incompetent. It is an unsupported foray into legislative motive, and assumes, without support in law or reality, that there can be a single such "motive" for a large deliberative body. The only question for the courts is the power of the Convention, under the federal Constitution, to adopt the challenged provisions, not the private beliefs which impelled it to do so. Moreover, the proffered proof could add nothing to appellants' case. There is no question here of the delegates' "intention" to deviate from a strict per capita

standard. Obviously, the formula tempers such a standard with other factors and the only question before the Court is not "intention" but the constitutional validity of the use of these factors.

B. The District Court was also correct in rejecting appellants' offer to prove that the Legislature, as a result of its claimed pro-rural bias, discriminated against urban areas in imposing taxes and distributing revenues. The Constitution does not regulate the allocations of taxes or revenues among a state's subdivisions. If a legislature passes an unconstitutional act, one may not claim malapportionment in order to strike down that act; on the other hand, if a legislature acts constitutionally, one may not show malapportionment by asserting the lack of wisdom of a legislature's actions. The offer was completely irrelevant, and attempted to involve the Courts in a purely political question to be thrashed out in the Legislature.

C. Finally, we believe that the District Court was clearly correct in rejecting appellant's offer to produce "expert" testimony as to whether the present apportionment was "fair and equitable". Obviously, the question of whether an apportionment formula is consistent with the Fourteenth Amendment is one for the Courts, not for "expert" testimony. It is interesting to note, however, that since the *Baker* decision, the "experts" have warned — with good reason — that any mandate to follow a strict per capita standard could only result in a setback for the cause of viable, responsive state government.

POINT I

New York's formula for apportioning seats in its Legislature is entirely consistent with the Fourteenth Amendment.

In this section of our brief, we shall show that New York's apportionment formula is free from any taint of unconstitutionality—whether it be tested under the traditional standards set down by this Court's past decisions under the Fourteenth Amendment, or by additional criteria which some commentators have urged are especially appropriate for apportionment cases, or even by standards—assuming them applicable—prescribing per capita representation as the dominant factor in any apportionment.

We have divided this section into two parts.

In the first part, we attempt to develop a standard for reviewing an apportionment under the Fourteenth Amendment. Although New York's apportionment formula emphasizes per capita representation in both the Senate and the Assembly—and it could be sustained even under a test which demands close adherence to per capita representation—we take issue with appellants' position that the starting point for measuring an apportionment is the per capita standard. We point out that there is no reason for assuming that per capita representation maximizes equality of representation; in fact, we argue that there is good reason to believe that such a standard will result in manifest inequality unless it is tempered by other considerations. We advocate that the Court, instead of adopting a per capita standard, focus first and directly on the problem of assuring that legislatures be responsive to the popular will. We suggest that such an emphasis, supplemented by familiar rules against arbitrary distinctions and invidious discrimination, would meet the need to insure that the voters of a state have reasonably "equal" access to its legislative process.

In the second part of this section, we deal with the specific facts presented by the instant case. We show, first, that New York's apportionment formula meets the needs of the State by assuring that the Legislature remains responsive to the popular will while preventing domination of the State by any one locality. Second, we show that the formula would survive even a rigorous comparison with a per capita standard. Finally, we demonstrate that, contrary to arguments advanced by appellants and those associated with them, there is no conflict between the apportionment formula and the familiar constitutional prohibitions against arbitrary distinctions and invidious discrimination.

A. The standard under the Fourteenth Amendment.

1. The lesson of Baker v. Carr: Governments must be responsive to the popular will.

It is paradoxical that appellants interpret this Court's momentous decision in *Baker* v. *Carr*, 369 U. S. 186 (1962), as a death knell for efforts by a state to structure a legislature in which all citizens may be equitably represented. One would have thought that the *Baker* decision would be regarded as a spur to the states to bring apportionments of past eras up to date and to devise more effective systems for reflecting the varied interests of its people in the councils of government. Instead, appellants and those associated with them have read *Baker* to mandate each state to apportion legislators among its political subdivisions solely with regard to the number of residents in such subdivisions and without any regard to the degree to which each resident may have access to his legislator and may claim through him a voice in civic affairs.

We share appellants' concern that all men should have an equal voice in the councils of government. Our democratic tradition demands no less of us. *Cf. Gray* v. *Sanders*, 371 U. S. 368 (1963). But it is quite another matter to

espouse a doctrine of per capita representation as being the sole test of equality. It is somewhat akin to saying that citizens are taxed "equally" only when they pay the same dollar amount to their government, regardless of how much they earn, or that a laborer is treated "equally" with his large corporate employer only when he is prohibited from entering a combination bent on increasing the rate of return for his services.

Obviously, there are factors other than per capita representation which determine whether one citizen has a voice in the legislature "equal" to that of another citizen. As this Court itself noted, "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government." *MacDougall* v. *Green*, 335 U. S. 281, 283 (1948). For example, a citizen residing in a sparsely populated county included in a multi-county legislative district, desiring to assert his power in the legislature on a matter affecting affairs of his county, could hardly hope to do so as effectively as could a citizen whose legislator represents the residents of only one county. Thus, it may be desirable to "equalize" the power of the two voters by guaranteeing each county a minimum of one representative in a legislative chamber. As another example, a voter in a thinly populated district—which, under a per capita standard, would necessarily embrace a large geographic area—might have to compete for the attention of his legislator with other citizens living far from him and having many interests diverse from his. A voter living in a more compact district, on the other hand, could combine with others living relatively near him and likely to have interests in common with his own. Again, it might be desirable to "equalize" the power of the two voters—in this instance, by limiting the extent to which increases in population in some localities could further increase the physical area of the more sparsely populated units, as, for example, by providing that the increased representatives from the more populated localities be added to the total number of repre-

sentatives in a legislative chamber. As a final example, a group of voters in a sparsely populated area might find their needs of little concern to the rest of the state. If their interests are to be given an equal opportunity for consideration by the legislature, it may be desirable to place some reasonable limit on the representation of the large counties in order to guarantee that the smaller ones will not be totally ignored. For these reasons we do not believe that the notion of "equality" of representation can be equated with that of per capita representation. In fact, the two are, in many respects, diametric opposites.

In sum, it is far more complex to "equalize" political power between residents of different legislative constituencies than it is to "equalize" power between residents of the same constituency. *Compare Gray* v. *Sanders*, 371 U. S. 368 (1963). In the latter case, each voter has equal access to an elected official—or as nearly equal access as the law can possibly guarantee—if his vote is counted equally. Through that official, he has access to government equal to that of every other member of the same constituency. In the former case, however, an individual voter in one constituency may, for reasons such as we have suggested, be better or less able to influence his legislator than would a voter in another district and, therefore, have a greater or lesser voice in the legislative process than his neighbor in another constituency.

Appellants and those associated with them apparently recognize the illusive nature of "equality" in legislative apportionments, for they carefully hedge their argument by admitting that there are factors other than a strict per capita standard which may play a part in a legislative apportionment. However, with a tenaciousness which we feel is unwarranted in logic, they suggest that a per capita standard—if not the only permissible standard under the Fourteenth Amendment—must be at least the starting point of any inquiry into the constitutionality of an apportionment. According to their position, any substantial

deviation from this standard would render an apportionment suspect, and might well result eventually in its being struck down. There is little, in principle, to support such a position. If, as we have suggested, per capita representation bears no necessary relation to equality of access to government—and in many cases bears a negative relation to that goal—there certainly is no more reason for per capita representation to be the starting point of inquiry than there is for it to be the ultimate touchstone of constitutionality.

What, then, would be the warrant for reading a requirement of per capita representation into the Fourteenth Amendment? Would it not be a return to outmoded principles of adjudication, long since abandoned by this Court, in which the Fourteenth Amendment was thought to embody particular theories of government, economics and other social sciences and thereby to preclude the states from experimenting with other, perhaps sounder theories? *Cf. Ferguson* v. *Skrupa*, 372 U. S. 726 (1963). Could a decision that there was not sufficient reason in a given case for departures from per capita representation be anything more than "a subjective ipse dixit" based, like the theories put to rest by the *Ferguson* decision, upon personal predilection rather than reason? See McCloskey, *Foreword: The Reapportionment Case*, 76 Harv. L. Rev. 54, 73 (1962).

Surely the principles which moved this Court to action in *Baker* v. *Carr*, 369 U. S. 186 (1962), rest on firmer ground than that occupied by the notion of per capita representation. In fact, we believe there is no reason why the focus of any inquiry into the validity of an apportionment should not rest directly on the great principle of the *Baker* decision itself—that state legislatures cannot entrench themselves as self-perpetuating oligarchies but must remain responsive to the popular will.

The facts of the *Baker* case itself are an excellent example of the need for such a principle. There, a state legis-

lature, with seemingly no rationale save self-perpetuation, resisted any reapportionment for over 60 years—in blatant disregard of the provisions of its own state constitution. The people of the state had no remedy available except recourse to the Courts. In short, the legislature had long since ceased to be responsive to the popular will. Power, instead of being derived from the people, was "locked in the hands of the legislature." See McCloskey, *Foreword: The Reapportionment Case*, 76 Harv. L. Rev. 54, 71 (1962).

The principle that governments must be responsive to the popular will, unlike that of per capita representation, is one that certainly commands the backing of our democratic traditions and is fundamental to the workings of our institutions. It would be entirely appropriate to measure the structure of any state legislature against this ideal. Such a principle would do no violence to the freedom of each state to determine for itself the best way to guarantee each voter an equal opportunity to be heard in the legislature. And—equally important—it would focus the attention of the Court on the genuine evil, which is not that state legislatures depart from per capita representation but that they often depart from the limits set on them by the people themselves.

Such an inquiry, of course, would begin by ascertaining whether an apportionment is grossly at odds with the standard set by the last expression of the popular will. See McCloskey, *Foreword: The Reapportionment Case*, 76 Harv. L. Rev. 54, 71 (1962). If, for example, there had been a significant passage of time since the last apportionment, with significant population shifts in the interim, and the legislature did not adhere to the standard of its own state constitution, a court might well be justified in striking down an existing apportionment.

Such a standard would be fully in line with past decisions of this Court: First, the Court has suggested in the

past that legislative action which restricts the political processes is particularly vulnerable to scrutiny under the Constitution. *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-53 n. 4 (1938). A fortiori, legislative refusal to comply with an existing mandate of a state constitution —thereby clogging the processes of political change— should be a subject of special concern to the Courts. Second, there is a great likelihood that an apportionment which departs from existing standards under the state constitution will fall afoul of "well developed and familiar" standards under the Fourteenth Amendment since it most probably reflects "*no* policy, but simply arbitrary and capricious action." *Baker* v. *Carr*, 369 U. S. 186, 226 (1962). See Lucas, *Legislative Apportionment and Representative Government*, 61 Mich. L. Rev. 711, 746 (1963); Neal, *Baker* v. *Carr: Politics in Search of Law*, 1962 Sup. Ct. Rev. 252, 290-91 (1962). Third, there is ample precedent for referring to state law as a starting point of inquiry under the Fourteenth Amendment. For example, in determining whether or not evidence admitted at a state criminal trial was illegally obtained, it may become relevant to ascertain whether the defendant had been validly arrested under state law before the evidence was seized from him. *Ker* v. *California*, 374 U. S. 23, 37 (1963) (opinion of CLARK, J.).

Finally, our proposed standard would explain the relevance of the availability of a political remedy to the voters of a "malapportioned" state. *Cf. Baker* v. *Carr*, 369 U. S. 186, 251, 258 (1962) (CLARK, J., concurring). If, as we believe, the central question in any apportionment litigation should be the degree to which the state legislature has remained faithful to the popular will, it is clearly relevant—especially where a legislature has strayed from the provisions of its own constitution or where, as is often the case, a state constitution contains no binding principles for apportionment—to determine whether the people of the state have approved an existing system or whether

it has been perpetuated by the legislature in spite of the popular will.

Obviously, this suggested standard offers only a starting point for inquiry. It will not and cannot determine the decision in every apportionment case. If, for example, a state apportionment rests on no rational basis, it might fall under the familiar prohibitions of the Fourteenth Amendment regardless of its popular antecedents. If, on the other hand, a state constitution contained no guiding principles for apportionment, it would still be open to the legislature to enact a rational system which does not give sole emphasis to a population standard. The difference in approach in each case is a matter of degree. But it is nevertheless an important difference—for it once and for all dispels the notion that a principled method of apportionment, approved by a majority of the voters of a state, which seeks to guarantee all voters equal access to the legislature, is somehow suspect because it does not equate "equality" with strict per capita representation.

2. *The role of per capita representation.*

To the extent that per capita representation has played a role in apportionment throughout our states, it has done so only as one of a number of factors.

This Court, in *Baker*, made it crystal clear that population is not the only criterion for apportionment. In fact, although the Court took great pains to avoid discussing the merits of the *Baker* complaint (369 U. S. at 197), five Justices nevertheless pointed out that it was appropriate for a state to use factors other than population in apportioning its legislature. 369 U. S. at 241, 244-45 (DOUGLAS, J., concurring), 251, 258 (CLARK, J., concurring), 265, 266 (STEWART, J., concurring), 266, 279 (FRANKFURTER, J., dissenting), 330, 334 (HARLAN, J., dissenting).

An overwhelming majority of our states depart from a per capita standard in both houses of their legislature.

Dixon, *Apportionment Standards and Judicial Power*, 38 Notre Dame Law, 367, 375-76 (1963). In 73 of our 99 state legislative chambers, legislators representing constituencies totalling less than 40 per cent of the population form a majority of the chamber. Only five states have apportionments in which neither house has a majority elected by constituencies containing less than 40 per cent of the state's population. Legislators representing constituencies comprising less than one-third of the population form a majority of one house in 47 legislative chambers, and in 12 states they form a majority of both houses. See Goldberg, *The Statistics of Malapportionment*, 72 Yale L. J. 90 (1962).

The nation-wide statistics are also reflected in the four states whose apportionments are now before this Court for plenary review. In Alabama, a legislative majority may be formed in the Senate from constituencies comprising 25.1% and, in the lower house, 25.7% of the state's population. National Municipal League, Compendium on Legislative Apportionment, p. iii (2d ed, 1962). *Cf. Sims* v. *Frink*, 208 F. Supp. 431 (M. D. Ala. 1962), *prob. jurisd. noted*, 374 U. S. 802 (1963), No. 23, Oct. T. 1963. In Maryland, such a majority may be formed in each house, from constituencies containing 14.2% and 25.3%, respectively, of the population. National Municipal League, *op. cit. supra*, p. iv. *Cf. Maryland Comm. for Fair Representation* v. *Tawes*, 229 Md. 406, 184 A. 2d 715 (1962), *prob. jurisd. noted*, 374 U. S. 804 (1963), No. 29, Oct. T. 1963. In New York, a majority may be formed from constituencies representing 36.9% and 38.2%, respectively, of the population. National Municipal League, *op. cit. supra*, p. ii. In Virginia, a legislative majority may come from constituencies representing 37.7% and 36.8%, respectively, of the state's population. *Id.*, p. iv. *Cf. Mann* v. *Davis*, 213 F. Supp. 577 (E. D. Va. 1962), *prob. jurisd. noted*, 374 U. S. 803 (1963), No. 69, Oct. T. 1963. In short, the cases reflect all parts of the spectrum with re-

spect to the per capita standard. Of all the states of the union, Virginia and New York rank second and twelfth, respectively, with respect to the weight they accord per capita representation, while Alabama and Maryland are thirty-ninth and forty-fourth, respectively, on the same scale. David and Eisenberg, Devaluation of the Urban and Surburban Vote 5 (1963).

It is obvious from the figures that per capita representation is not and has not been the sole measure of state apportionment. See also *Blaikie* v. *Power*, 13 N. Y. 2d 134, —— N. E. 2d —— (1963) (sustaining county-at-large minority representation in the New York City Council). Other factors—which we shall now discuss—play no less important a role in our representative traditions.

3. *The role of other devices for assuring that Government rests on the consensus of the governed.*

The role of the many traditional factors which go into an apportionment has been widely disparaged and misunderstood—to a large extent, because advocates of the per capita standard have been flaying a straw man. The Solicitor General, for example, states that factors other than per capita representation should not "have value as such" (Br., p. 23); but this statement, of course, fails to address itself to the issue. It is true that area, political subdivisions, population density and the like are not valued "as such" in an apportionment, but neither, for that matter, is per capita representation. The important value is that each citizen—no matter whether he lives in a district spanning a large area or one that is relatively compact, whether he lives in a highly populous county or in a county with a small electorate, whether he lives in a thickly populated area or a thinly populated area—should have equal access to the legislative process so that the legislature may be responsive to his needs.

We already have alluded to at least three factors which we believe should be taken in account, along with per

capita representation, in devising a successful apportionment system. First, we believe that it is often desirable to guarantee each county a minimum of one representative in a state legislative chamber. Many of the issues which a voter seeks to press through his legislative representative involve matters which also touch on his relation with county government. For example, voters interested in a new road being constructed by a county government may be eager to have the state legislature appropriate additional funds for such a project, or to have the legislature pass any enabling statutes which are necessary for the project. Such matters, which involve the relation between county and state government, require that the voters of each county be guaranteed at least one representative in the legislature. It may also be desirable to limit the effect on an existing apportionment caused by rapid population growth in already populous areas. Otherwise, legislative districts in the less populous localities may have to span so wide an area that voters in one part of such a constituency will share little in common with voters in another part of the same district. Such voters would be disadvantaged in attempting to influence their representative, unless there were some ameliorating feature built into the apportionment system. Finally, it may be necessary to place some reasonable limit on the number of representatives apportioned to the larger counties, in order to assure a proper diffusion of political power among voters in all parts of the state so that no one small group of counties can control the legislature and ignore the needs of the rest of the state. *Cf. MacDougall* v. *Green*, 335 U. S. 281 (1948). In our view, these factors are just as significant as the per capita standard in affording each voter an equal opportunity to make his wishes felt in the legislature.

Of course, these factors are not limited to the problem of apportioning state legislatures, and it is hardly surprising that they also are reflected in those provisions of the

federal Constitution which guarantee two Senators to each state, U. S. Const. Art. I, § 3, and provide that each state shall have at least one seat in the House of Representatives, U. S. Const. Art. I, § 2. Although the advocates of sole reliance on a per capita standard argue vigorously that the federal system has no bearing on the interpretation of the Fourteenth Amendment, we believe that their argument misses the point. Even if we assume—contrary to this Court's holding in *MacDougall* v. *Green*, 335 U. S. 281, 283 (1948)—that it would not be strange to hold that the Fourteenth Amendment strikes down a system promulgated by the Constitution itself, it would nevertheless be pertinent to note that the same considerations which prompted the founding fathers to shun a per capita standard in both houses of the Congress are equally operative in the field of state legislative apportionment. See Israel, *On Charting a Course Through the Mathematical Quagmire*, 61 Mich. L. Rev. 107, 123-24 (1962).

The "federal analogy" does, however, come up in a kind of reverse twist. For example, appellants argue (Br., pp. 49-50) that if the Court were to accept this "analogy", it must decide which of the two houses of a bicameral legislature must be apportioned on a per capita basis and which house may give weight to other factors. The assumption is, of course, that per capita representation must be the standard for one chamber if not for both. We believe that this assumption is completely unwarranted. To start with, its premise is ill-founded—the Congress does not adopt per capita representation in either house. It shuns it completely in the Senate, and it provides a minimum guarantee of one representative per state in the House of Representatives—the same guarantee as is embodied for each county in the New York Assembly. Moreover, the conclusion is utterly lacking in logic. If it is rational to temper per capita representation with other factors in one house, why is it irrational to do so in both houses? See Neal, *Baker* v. *Carr*: *Politics in Search of Law*, 1962 Sup. Ct. Rev. 252, 286 (1962). There may be factors, such as those

limiting the size of a district or guaranteeing one representative per county, which are appropriate for consideration in both houses. *Cf. Caesar* v. *Williams*, 371 P. 2d 241 (Idaho, 1962); *Jackman* v. *Bodine*, 78 N. J. Super. 414, 188 A. 2d 642 (1963). Or, a state may find more suited to its needs an apportionment which guarantees one legislator per county in one house, while placing reasonable limitations, for example, on the size of the districts or on the number of representatives from any area, in the other house. In this way, the state may retain per capita representation to some degree in both houses while giving appropriate weight to other important factors in each house.

4. *The role of familiar standards under the equal protection clause.*

We believe, for the reasons we already have stated, that it is open to a state to construct a principled apportionment which relies on standards other than per capita representation in an attempt to give each citizen equal access to the legislative process.

This is not to say, however, that the legislature of a state is entirely free of restraint in the apportionment process. As this Court noted in the *Baker* decision, "Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action." 369 U. S. at 226. Thus, an apportionment may fall because it is a "crazy quilt," without any apparent rhyme or reason, *cf. Baker* v. *Carr*, 369 U. S. 186, 231, 256 (CLARK, J., concurring), or because it implements an invidious state policy, such as deliberately abridging the vote of a racial or religious minority. *Cf. id.* at 266, 300 (FRANKFURTER, J., dissenting).

An arbitrary apportionment may arise in several ways. Most often, as in *Baker* itself, it will come about simply

through the failure of the legislature to reapportion over a long period of time. See Note, 72 Yale L. J. 968, 995 (1963). Sometimes, it may arise when a legislature, not bound by the state constitution to follow any specific apportionment formula, enacts an apportionment which seems on its face to have no reasonable basis at all. *Cf. Mann* v. *Davis*, 213 F. Supp. 577 (E. D. Va. 1962), *prob. jurisd. noted*, 374 U. S. 803 (1963), No. 69, Oct. T. 1963. Occasionally it may arise when a legislature, although bound by a principled apportionment formula written into its state constitution, ignores that formula and enacts a seemingly inexplicable apportionment. In all these cases, it is incumbent upon the state to explain the factors on which it relies to support the rationality of the apportionment. If these factors remain unexplained, *cf. Mann* v. *Davis*, *supra* at 584, it is open to a Court to hold that, on the particular facts, the apportionment is arbitrary.

The situation is vastly different when a principled formula for apportionment is written into the state constitution and is consistently followed by the legislature. Of course, that does not inevitably immunize the formula from challenge under the Fourteenth Amendment. But—on the other hand—there is a strong presumption of constitutionality attached to such a system and, under the familiar standards of the Fourteenth Amendment—made applicable to apportionment cases by the *Baker* decision—such a state determination must be upheld unless it is "without any reasonable basis". Rationality, not "mathematical nicety", is the relevant test of constitutionality. *Morey* v. *Doud*, 354 U. S. 457, 463-64 (1957).

B. The New York formula is constitutional.

1. Burden of proof.

Before we turn to an examination of the specific features of New York's apportionment system, we believe it is appropriate to point out that appellants bear the burden of

showing that New York's formula "does not rest upon any reasonable basis, but is essentially arbitrary." *Morey* v. *Doud*, 354 U. S. 457, 464 (1957). See *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 584 (1935).

Appellants have argued (Br., pp. 52-55) that the normal rules regarding burden of proof do not apply in this case and that we, not they, bear the burden of proof. They state that where a constitutional challenge relates to "basic civil liberties", instead of to classifications "of an economic nature", the presumption of constitutionality disappears as soon as a colorable complaint is filed. This is, of course, a virtual elimination of this presumption and a complete reversal of existing law. See, *e.g.*, *McGowan* v. *Maryland*, 366 U. S. 420, 426 (1961). Even if appellants' argument were restricted to cases where apportionments varied from a per capita standard, their novel conception of a plaintiff's burden has no justification in reason or experience. If—as we firmly believe—per capita representation is not the sole permissible factor in an apportionment system, there is no reason at all to shift the burden of proof to the state just because a system uses other factors to mitigate some of the less fortunate effects of a per capita standard. And appellants' theory proves too much; under it, they would likewise succeed in making a prima facie case on the barest statistical showing in virtually every state of the union. See *Baker* v. *Carr*, *supra*, 369 U. S. at 266, 319 (FRANKFURTER, J., dissenting). For almost every state departs from a strict population standard—and for very good reasons, too. There is no reason to suspect unconstitutionality from a commonplace.

This is all the more true where, as in New York, the apportionment is based upon a formula set forth in the state constitution. Although we agree with appellants (Br., p. 54) that any state statute—not only a state constitution—is entitled to a presumption of constitutionality, there are practical considerations which differentiate the two cases.

Where a legislature passes an apportionment which is either at odds with the state constitution or not based upon a formula expressed in the constitution, it may be necessary to call upon the state at some point to explain the basis for the apportionment. *Cf. Mann* v. *Davis*, 213 F. Supp. 577, 584 (E. D. Va., 1962, *prob. jurisd. noted* 374 U. S. 803 (1963), No. 69, Oct. T. 1963. On the other hand, where the basis for the apportionment is clearly set forth in the state constitution, there is no such necessity. Moreover, where a state—as in *Baker* itself—acts in violation of its own constitution, there is reason for severe scrutiny under the Fourteenth Amendment because the normal political process in that state has been set at naught and cannot right itself. *Cf. United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-53 n. 4 (1938). Where, on the other hand, the legislature acts in conformity with the will of the people as embodied in the state constitution, the normal presumptions of compliance with federal standards should be at their strongest force.

Appellants' arguments on burden of proof merely point up the obvious: that their entire case depends upon a statistical showing of minimal departures from a per capita standard—departures which are inevitable if other important ingredients are to be accommodated in a viable apportionment system. It is to these ingredients that we now turn our attention.

2. *The New York formula provides for representation which is responsive to the popular will and at the same time prevents domination of the State by any one locality.*

Although, as we shall show, the New York formula adheres substantially to a per capita standard in both houses of the Legislature, it combines this factor with three other basic criteria—all of which appellant must show to be irrational.

First, New York emphasizes that many of the interests which a citizen may wish to assert in the legislative process are interests which touch on his relation to the government of his county as well as to the State, and that these interests consequently are often peculiar to the citizens of one county and its government.

In fact, New York State's 62 counties play a vital role in the State government. As Judge LEVET's District Court opinion noted (R. 307-312), the counties have been an integral part of New York's governmental structure since early colonial times. An understanding of New York's system of legislative apportionment must begin with some understanding both of the counties' historical importance and of their modern functions and responsibilities.

The county system really began in New York in 1683, when the first colonial assembly—consisting of eighteen freeholders, elected from different localities in the colony pursuant to the governor's writ*—created 12 counties. 3 Lincoln, The Constitutional History of New York 139 (1906). By the time of the Declaration of Independence in 1776, the counties had become firmly entrenched as the primary units of local government. County courts, having both civil and criminal jurisdiction, had been established in each county by the colonial legislature as early as 1692. With the creation of the offices of Sheriff

---

* Popular agitation for representative government led the Duke of York, then proprietor of the colony, to issue instructions to Governor Dongan on the 27th of January, 1683, to convene an assembly of not more than eighteen representatives, to be chosen by the freeholders of the colony. Since the instructions were silent as to the method of apportioning the representatives among the different parts of the colony—which had not yet been divided into counties—this matter was left to the discretion of the governor and council. The resulting apportionment of representatives to the first Assembly among the various localities combined the ideas of territory and population which have since controlled the distribution of members of the legislature. See 3 Lincoln, The Constitutional History of New York 137-138 (1906).

and District Attorney, law enforcement became organized on a county basis. Other functions, too—such as the building and maintenance of jails, courthouses, bridges and highways—had gradually come to be assumed by the county legislative bodies. See Drake, *History of the County Law*, Introduction to [McKinney's] N. Y. County Law pages xxvi-xix (1950). During the Revolutionary War, the counties organized their own militia to protect themselves, to furnish troops to the continental army and to man the frontier forts. *Id.*, p. xxxiii.

New York's first constitutional convention—the convention of 1777, held during the War—was composed of delegates from all of the counties except Richmond. 1 Lincoln, The Constitutional History of New York 485 (1905). The acknowledged importance of the counties is reflected in the 1777 Constitution's provisions for legislative apportionment. The 1777 Constitution provided (§§ X, XI, XII) for a Senate of 24 members, to be elected from four great senatorial districts, each composed of several counties, and (§ IV) for an Assembly composed of seventy members "to be annually chosen in the several counties". Provisions were made for periodically increasing or decreasing the number of representatives from a county in the Assembly (§ V) and from a district in the Senate (§ XII), as censuses showed population fluctations. The county, however, was distinctly recognized in the first Constitution as the primary unit of both Assembly and Senate representation: although each county was not guaranteed separate representation in either house, counties were not fragmented among two or more districts.

Prior to 1821, Assembly districts were several times composed of two or three counties, much as Senate districts may be under the 1894 formula. 3 Lincoln, *op. cit. supra*, 157. The Constitution of 1821, however, provided that every county was to be entitled to at least one member of the Assembly, and that no new county was to be created

unless its population would entitle it to a member (Art. I, § 7). The size of the Assembly, which had been increased to 100 by an 1801 amendment to the Constitution, was increased again, to 128 (Art. I, § 2), reflecting the increase in the number of counties which took place in the early 19th century, as people began to settle in the central and western portions of the State. The Senate, increased in size to 32 by an 1801 amendment, remained at 32 but with its members to be chosen from eight, rather than four, districts (Art. I, §§ 2, 5). Again, area and population were the two principal criteria in the apportionment of both houses, with the unity of interest of the counties receiving implicit recognition.

The Constitution of 1846 created 32 single member Senate districts, to be established on the basis of population but with the further provisions that the districts consist of contiguous territory and that no county be divided in the formation of a Senate district unless entitled to two or more Senators (Art. III, §§ 3, 4). The size of the Assembly was left at 128 by the Constitution of 1846, and the requirement that every county (except Hamilton, which would elect with Fulton) should be entitled to at least one member of the Assembly was retained (Art. III, §§ 2, 5). The County Boards of Supervisors, in counties entitled to more than one member were, however, given the power to divide their counties into districts containing as nearly as practicable an equal number of inhabitants, though they could not divide towns in forming the assembly districts (Art. III, § 5).

The many functions performed by the county in New York State today reflect both the historic gravitation toward the county as the central unit of political activity and the realistic fact that, as the largest of the local government units, the county is usually the most efficient and practical medium for initiating and carrying out programs beneficial to residents of the different areas of the state.

For example, state aid is administered by the counties in the following areas: educational extension work (N. Y. Education Law §§ 1104, 1113), community colleges (N. Y. Education Law §§ 6301, 6302, 6304), assistance to physically handicapped children (N. Y. Education Law § 4403), social welfare such as medical and other aid for the aged, the blind, dependent children, the disabled, and other needy persons (N. Y. Social Welfare Law §§ 153, 154, 257, 409)*, public health (N. Y. Public Health Law §§ 608, 620, 636, 650, 660), mental health (N. Y. Mental Hygiene Law, Art. 8-A, § 191-a), probation work (N. Y. Correction Law § 14-a), highway construction, improvement and maintenance (N. Y. Highway Law §§ 12, 112, 112-a, 279), conservation (N. Y. County Law § 219, 299-w, N. Y. Conservation Law §§ 205, 879), and civil defense preparations (State Defense Emergency Act §§ 23-b, 25-a).

County governments, are, of course, far more than instrumentalities for the administration of state aid. They have extensive powers to adopt, amend or repeal local laws affecting the county (N. Y. County Law §§ 301-309), and also play a vital part in the enactment of state laws which affect only a particular county or counties (See N. Y. Constitution, Art. IX, § 1). The enactment in 1959 of a new

---

* Although the administration of home relief started as a town and city function, the local administration of public assistance and care has today become primarily a county function. With the exception of the City of New York, and the counties of Dutchess, Orange, Oswego, Ulster and Cayuga, each county of the State is constituted a county public welfare district. The territory of each of the five latter counties, exclusive of the cities of Poughkeepsie, Newburgh, Oswego, Kingston and Auburn, is also constituted a county public health district. Subject to certain reimbursements from the State and other public welfare districts and the provision for the allocation of certain expenses between the county district and the towns and cities therein, each public welfare district is responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself (See N. Y. Social Welfare Law §§ 65-73, 74-75-a).

County Charter Law (N. Y. County Law, Art. 6-A), providing opportunity for the fundamental reorganization of county governments by county residents, has given the counties an even greater role to play in the social, economic and political life of modern New York.

Counties must work closely with one another, and with the state Legislature, if complex problems in areas such as transportation, conservation, electrical power, agriculture, crime prevention and law enforcement, public health and welfare, housing, recreation and unemployment are to be brought closer to successful solution. To perform its functions effectively, the county needs a representative in the Legislature who can represent its interests and bring its needs to the attention of the entire body. See Lewis, Legislative Apportionment, 71 Harv. L. Rev. 1057 n. 3 (1958). By the same token, the Legislature must know the needs and problems of all the areas of the state. Unless there were some guarantee of minimum representation to the electors of a single county, the less densely populated counties would be grouped together in multi-county districts in which the legislator's functions as a liaison between the county and state government would virtually disappear.

The 1894 Convention carefully took these considerations into account when it submitted the present formula to the people for approval. See, *e.g.*, 3 Revised Record of the Constitutional Convention of 1894, pages 1223-26 (1900). The provision of the New York apportionment formula which most obviously meets this need is that which guarantees at least one Assemblyman to each county. However, the two major provisions dealing with senatorial apportionment, the "full ratio rule" and the provision for enlarging the Senate, also tend towards this goal, since they allow many of the less populated counties to have their own Senator and restrict the size of multi-county senatorial districts. All three provisions operate, with varying degrees of directness, to keep the New York

Legislature a viable forum for administering the vast complex of county government in the State.

Second, New York has emphasized in its apportionment formula that the physical size of a district may have a significant bearing on a voter's capacity to influence the legislative process through his elected representative. If a per capita standard resulted in the creation of overly large districts in sparsely populated areas, a voter in such a district would be disadvantaged in two ways: (1) he would not have the intimate contact with his legislator possessed by a voter in a heavily populated district covering a relatively few city blocks—distance might prevent the voter from expressing his views to the legislator and the legislator from consulting his electorate; (2) a voter in an overly large district would be likely to lose one of the most important benefits of a single-member district system—representation in a district which has some modicum of shared problems, enabling the legislator to become a spokesman for views which might otherwise not be heard. If a district spans too large an area, there may well be no such community of interest among its voters, and one of the most important links between a citizen and the legislative process will have disappeared.

The extremely irregular population density in New York State makes it particularly necessary that geographical considerations be taken into account in any apportionment system. The six counties in which plaintiffs in this lawsuit reside contain 56.2% of the citizen population of the State, but constitute only 3.1% of its area (R. 61). On the other hand, the Assemblyman from St. Lawrence County, which covers 2,767 square miles (*id.*), an area larger than the State of Delaware, although he represents comparatively few people, represents a constituency that spans an extremely large geographical area; and the Senator from the 40th Senatorial District, which includes St. Lawrence as well as Clinton and Franklin Counties, represents an

area totalling 5,511 square miles (*Id.*), larger than the state of Connecticut. If a strict per capita standard were adopted in either house, it would necessitate one of two courses of events, neither of which is conducive to a representative democracy—either the Legislature would grow so large that effective discussion would come to a standstill, or the districts would grow so large as to make the legislator and his constituents virtually inaccessible to one another and to prevent a district from representing any significant community of interest among its voters.

All three of the major provisions of the apportionment formula here attacked are an attempt to satisfy the need for geographical distribution of legislators. Although the provision which most directly meets this is the one for enlarging the Senate, *cf. Matter of Fay*, 291 N. Y. 198, 208, 52 N. E. 2d 97, 99 (1943), the other provisions of course also tend in that direction by restricting the undiminished operation of a per capita standard and limiting the representation of the most populous areas.

To be sure, as appellee Nickerson points out (Br., pp. 41-43), there is no specific reference in New York's apportionment formula to area and, consequently, the formula has no fixed correlation between geographical considerations and other factors. But surely the Constitution does not require that such considerations be embodied in a formula of mathematical certainty. *Cf. Morey* v. *Doud*, 354 U. S. 457, 463-64 (1957). There can be no doubt from the history of the 1894 Convention that geography had become a vital issue. The delegates heard complaints that the area of senatorial districts had become so large that Senators could not properly represent the constituencies. 3 Revised Record of the Constitutional Convention of 1894, pp. 1210-11 (1900). And, in its address to the people, the Convention indicated that the enormous size of some of the districts was one of the most important elements in determining the provisions which emerged from its de-

liberations. 5 Revised Record, *op. cit. supra*, pp. 1253-54. Furthermore, the formula operates much as the delegates to the Convention foresaw that it would. By limiting the extent to which sparsely populated counties lose representation to their densely populated neighbors, the New York formula—particularly the provision for enlarging the Senate—meets the need to temper per capita representation with these geographical considerations.

Third, New York must take into account the unique concentration of population and political power in a few localities in order to assure that the wishes and needs of the rest of the State will not be ignored.

The "full ratio" rule in the Senate is designed to prevent the strangulation of the democratic process through a monopoly of political power, and the provision for adding increments in representation of a populous county to the total size of the Senate and for one Assemblyman per county also help to achieve that objective.

This situation is almost entirely peculiar to New York, which is one of only two states in which the central cities of a state's metropolitan areas can elect a majority of representatives to the legislature. United States Advisory Comm. on Intergovernmental Relations, Apportionment of State Legislatures (Report A-15), p. 44 (1962). The nine counties comprising one such metropolitan area—that which is made up of New York City and Nassau, Rockland, Suffolk and Westchester Counties (R. 75)—have 63.2% of the total citizen population of the State and a clear majority of both houses of the Legislature (R. 237, 239-40). New York City alone, because of its large population, is the focal point of any gubernatorial election. See Munger and Straetz, New York Politics, 39-40, 55-63; Note, 72 Yale L. J. 968, 1022 (1963).

It is a worthy part of our tradition to limit such concentration of political power. As the Solicitor General of

the United States has himself pointed out:

> "Constitutional statecraft often involves a degree of protection for minorities which limits the principle of majority rule. Perfect numerical equality in voting rights would be achieved if an entire State legislature were elected at large but the danger is too great that the remote and less populated sections would be neglected or that, in the event of a conflict between two parts of the State, the more populous region would elect the entire legislature and in its councils the minority would never be heard.
>
> "Due recognition of geographic and other minority interests is also a comprehensible reason for reducing the weight of votes in great cities. If seventy percent of a State's population lived in a single city and the remainder was scattered over wide county areas and small towns, it might be reasonable to give the city voters somewhat smaller representation than that to which they would be entitled by a strictly numerical apportionment in order to reduce the danger of total neglect of the needs and wishes of rural areas." Amicus Brief for the United States, *Baker* v. *Carr*, *supra*, pp. 29-30.

The Constitutional Convention, in its Address to the People, frankly noted its concern over this problem. It asked:

> "What will be the consequence of compelling the vast region from the city of New York to St. Lawrence and to Lake Erie, with its varied interests, sentiments and opinions not over well understood by the inhabitants of the city, to submit to such domination? Would such an arrangement conduce to the permanent welfare of the State?" 4 Revised Record, *op. cit.*, *supra*, p. 1255.

It noted, too, that "the advantage is still greatly on the side of the city as against the country districts on account

of their small territory, and the fact that all of the representatives stand for the entire city." *Ibid.*

Even if the dangers of political monopoly be ignored, it is still pertinent to inquire whether concentration of legislative representation in one area does not give that area power in the Legislature far beyond that which justly accrues to it even in terms of a per capita standard. As Elihu Root, a delegate to the Convention, remarked:

> "The question is whether thirty separate centers of 38,606 each scattered over the country are to be compared upon the basis of absolute numerical equality with one center of thirty times 38,606 in one city, with all the multiplications of power that comes from representing a single interest, standing together on all measures against a scattered and disunited representation from the thirty widely separated single centers of 38,606. Thirty men from one place, owing their allegiance to one political organization, representing the interest of one community, voting together, acting together solidly; why, they are worth double the scattered elements of power coming from hundreds of miles apart." 3 Revised Record, *op. cit., supra*, pp. 1214-15.

Effective democracy requires a pragmatic approach, not an all-or-nothing standard. The New York formula, particularly the "full ratio" provision, attempts to supply the necessary flexibility to meet the threat of undue concentration of power.

These three basic considerations have been met by the New York apportionment formula—which has been retained by the people of the State in their constitution since 1894. We believe it has given New York a government which is genuinely responsive to all interests, rural and urban, in the State. Seven decades of progressive government speak eloquently to that fact.

One of the most conspicuous indications of the success of the formula is that is has withstood the test of time. Under Article XIX, § 2 of the New York State Constitution, the people of the State must vote on the question "shall there be a convention to revise the Constitution and amend the same?"; this question is put before them every twentieth year and also at such other times as the Legislature may direct. If the people vote to hold such a convention, they choose delegates at the next ensuing general election who must meet in April following the election. If the convention proposes amendments, the people must be given an opportunity to vote on the proposals at an election to be held not less than six weeks after the adjournment of the convention. If adopted by the majority, the amendments become effective on the following January 1. The 1894 provisions here attacked were themselves adopted by a majority vote of the people of the State, pursuant to this provision. 1962-63 N. Y. Legis. Manual 320 (1962).

Since that time the people have repeatedly refused to alter the present State constitutional formula for apportioning members of the Legislature. In 1915 and 1938, they rejected proposals by their constitutional conventions to amend the apportionment formula. The 1915 proposals were rejected by a vote of 891,337 to 371,588, *id.* p. 323; the 1938 proposals were rejected by a vote of 1,425,344 to 848,367, *id.* p. 330. In 1916 and 1957, the people of the State of New York voted against holding a constitutional convention; the 1916 vote was 658,269 to 506,563, *id.* p. 323; in 1957 the convention was rejected by a vote of 1,368,063 to 1,242,568, *id.* p. 340. The 1957 rejection of a constitutional convention deserves particular emphasis because Governor Harriman had urged that the people vote for a convention to revise the appointment formula. He stated that the most urgent constitutional reform needed was "to elect one house of the legislature on the basis of population to give big cities fuller representation." New

York Times, Sept. 7, 1957, p. 1, col. 8. See *id.*, Sept. 24, 1957, p. 29, col. 1; Octo. 29, 1957, p. 22, col. 5. Despite his position, the voters rejected a convention.

The 1957 election and its predecessor elections show clearly that appellants could not rely even on an oversimplified majoritorian theory to sustain their complaint. The essence of that complaint is that urban residents are underrepresented in the Legislature, and therefore are unable to assert their political power in the councils of the State. Yet, even if the majority were suppressed in the the Legislature—and we shall demonstrate that it is not—it was hardly suppressed in the 1957 election. According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the total State population (R. 227-28, 234). The "full ratio" counties—portrayed by appellants as the arch-victims of discrimination—had a clear majority of the citizen population of the State (Pl. Exh. 4, R. 180, 246), and appellants themselves admit that if these counties were able to elect the state-wide delegates, they could have controlled any constitutional convention in 1957 (Br., p. 71).

This is not to say that there were not other issues at stake in past votes respecting constitutional conventions or even constitutional amendments. It does point up, however, that it has always been open to the citizens of the State to change this formula. Power remains where it belongs, with the people—and they have been content with their representation in the legislative process.

3. *Even if the Constitution required substantial adherence to per capita representation, the New York formula would satisfy such a test.*

Up to this point, we have indicated our view that sole adherence to a per capita standard is not necessarily a desirable basis upon which to structure a state legislature, and we have tried to show that New York justifiably places

some reliance on factors other than per capita representation. The most striking fact about the New York apportionment, however, is not that it takes into account these other factors—virtually all the states do so—but that it adheres more strictly to a per capita standard than do three-fourths or more of the other states of the Union.

New York ranks twelfth among the states in its degree of conformity to per capita representation. David and Eisenberg, Devaluation of the Urban and Suburban Vote 5 (1961). In contrast with some states which depart radically from the per capita standard, New York structures its legislature so that constituencies which make up a majority of the legislature must contain, in the Senate, at least 36.9% of State's population and, in the Assembly, at least 38.2% of the population. National Municipal League, Compendium on Legislative Apportionment, p. iii (2d ed. 1962). Of the other three states whose apportionments are now before this Court for review, Virginia ranks second in the nation in adherence to the per capita standard, with theoretical majorities in each house of its legislature made up respectively of 37.7% and 36.8% of the population; Alabama ranks 39th with theoretical majorities in each house of 25.1% and 25.7%; and Maryland ranks 44th, with theoretical majorities of 14.2% and 25.3%, respectively. David and Eisenberg, *op cit. supra*, p. 5; National Municipal League, *op. cit. supra*, pp. iii-iv.

In light of the requirements of New York's apportionment formula, it is hardly surprising to find that it comes so close to per capita representation. Indeed, the widest disparities in per capita representation among the counties occur in the Assembly (R. 236), and are traceable to the minimal guarantee of one Assemblyman per county—the same guarantee as is given to each state in the House of Representatives. U. S. Const. Art. I, § 2. The disparities in the Senate are much narrower (R. 234) and arise out of the provisions for apportioning only on a full ratio and enlarging the total size of the chamber.

Despite these facts, those who challenge the present system have harped on the numerical disparities which inevitably occur in any system which is not entirely pegged on per capita representation, and they have cited a proliferation of extreme cases of "overrepresented" and "underrepresented" districts. We do not believe that these statistical configurations can withstand analysis. Even advocates of a per capita standard have pointed out that measures of extreme cases can hardly be the test of an apportionment. See David and Eisenberg, Devaluation of the Urban & Suburban Vote 3 (1961). Neither is it pertinent to dwell, as do appellants (Br., p. 35), on the extent to which the small counties are "overrepresented", for the figures produced are only misleading. Because the total representation for these counties is very small, any increased representation given to them looms large as a percentage figure but has little effect on the representation of the larger counties. For example, although the five least populous counties of New York—on a per capita basis—now have a voting power which is 848 per cent of the State average, the most populous counties' voting power is 86 per cent of the State average. *Id.* at 50. If instead of relying on extremes one looks at the overall figures, it is difficult to see how New York could come closer to a per capita basis without disregarding other factors which are needed to insure fair representation to all voters in the State.

As we already have pointed out, the population figures themselves conclusively refute the central allegation of appellants' complaint—that New York's formula results in a "grossly unfair weighting" in favor of "the lesser populated rural areas" and "to the great disadvantage of the densely populated urban centers of the state" (R. 6). According to the 1960 census, the six counties represented by the six individual plaintiffs had a citizen population of 9,129,780, or 56.2% of the total citizen population of the State (R. 227-28, 234). They were represented by 72 Assemblymen and 28 Senators—48.0% of the Assembly and

48.3% of the Senate (R. 227-29). If the Legislature reapportions the State on the basis of the 1960 census figures, these same counties will have 26 Senate seats and 69 Assembly seats, 45.6% and 46.0%, respectively, of the two houses (R. 234, 237). The ten most heavily populated counties in the State (Kings, Queens, New York, Bronx, Nassau, Erie, Westchester, Suffolk, Monroe and Onondaga) have, under the current apportionment, 38 Senate seats, 65.5% of all the Senate, and 93 Assembly seats, 62.0% of all the Assembly (R. 227-29); when the Legislature reapportions New York on the basis of the 1960 census figures, these same counties will have 37 Senate seats and 92 Assembly seats, 64.9% and 61.3%, respectively, of the two houses (R. 234, 237). They have a citizen population of 11,937,406—73.5% of the total citizen population of the State (R. 234). Each of these counties is at least 72% urban, and most are over 90% urban (R. 61).* Each is in a metropolitan area. Munger and Straetz, New York Politics 46 (1960).

In a further effort to disparage the close relation which the present formula bears to per capita representation, appellants (Br., p. 36) and the New York City officials aligned with them (Br., p. 15) have set forth voting figures which show, they claim, that the party composition of the Legislature does not adequate reflect the number of votes case for candidates of the democratic party. Even if this contention could conceivably be related to the merits of their position, we believe it is not supported by the figures

---

* Appellants object (Br., pp. 31-32) to any comparison based upon the ten largest counties, since they are not all "underrepresented". They insist that any meaningful comparison must be between the "full ratio" counties and the rest of the State. Thus, they have apparently abandoned their claim that the New York constitution reflects any rural-urban bias, and rest solely upon an assertion that each county must be accorded representation on a per capita standard. In any event, the "full ratio" counties are adequately represented. In the projected apportionment, they have 26 Senators, or 45.6% of the Senate, with 9,519,316 total citizen population, 58.6% of the total for the State (R. 234).

they present. First of all, it is a matter of judgment whether one political party or another is adequately represented in a legislature; one commentator, for example, has concluded that the present apportionment does an excellent job along that line. See Dixon, Apportionment Standards and Judicial Power, 38 Notre Dame Law. 367, 382 n. 82 (1963). Second, the figures contained in appellants' and the City's briefs completely misconstrue the functions of a single-member district system. They assume that such a system should reflect the total party vote in the state in the same way as would, say, a system of proportional representation. That view is, of course, wholly erroneous. A single-member district system reflects the wishes of a majority of the voters in each district; it does not attempt to mirror the whole. Accordingly, we have corrected appellants' and the City's figures in accordance with the assumptions of a single-member district system. That is, we have counted each vote in a Senate district electing a Republican as a "Republican" vote, and each vote in a Senate district electing a Democrat as a "Democratic" vote. The figures for the past five legislative elections follow:*

Year	*Total Vote Rep. Dists.*	*Total Vote All Dists.*	*Rep. Pct.*	*Rep. Sens.*	*Total Sens.*	*Rep. Pct.*
1954	3,023,014	5,241,393	57.7%	34	58	58.7%
1956	4,701,959	7,188,138	65.4%	38	58	65.5%
1958	3,516,775	5,842,507	60.2%	34	58	58.7%
1960	3,962,830	7,019,368	56.5%	33	58	56.9%
1962	3,384,566	5,921,501	57.2%	33	58	56.9%

These figures certainly demonstrate that, contrary to appellants' charges, the apportionment formula adequately reflects the party vote.

---

* Sources: For 1954: 1956 N. Y. Legis. Man. 1071-80
For 1956: 1957 N. Y. Legis. Man. 1074-85
For 1958: 1959 N. Y. Legis. Man. 1093-1103
For 1960: 1961-62 N. Y. Legis. Man. 1112-23
For 1962: 1962-63 N. Y. Legis. Man. 1168-79

In sum, the discrepancies even between a sole per capita standard and the present New York formula are minimal. Unless strict adherence to per capita representation alone is mandated by the Fourteenth Amendment—a conclusion which would ignore many other vital ingredients of "equality"—we do not believe that any fault can be found with the New York system's provisions for popular representation.

4. *The New York formula does not result in any arbitrary distinction or invidious discrimination.*

Although the Solicitor General of the United States has admitted, with commendable candor, that New York's apportionment rules cannot be described as a "crazy quilt" (Br., p. 11)*, appellants and the City, in an attempt to analogize this case to *Baker* v. *Carr*, 369 U. S. 186 (1962), nevertheless argue that New York's formula cannot satisfy even a test of minimum rationality. For the most part, these arguments merely echo those which would have the per capita standard preempt the field of apportionment. Insofar as these arguments raise new material, we shall address ourselves to them here.

One of these arguments, however, merits particular attention because it constitutes a complete turnabout from the theory of appellants' complaint. The City maintains (Br., p. 62-66) that the Senate apportionment is irrational because it does not show any consistent bias against urban in favor of rural counties, but merely restricts the per capita representation of the more populous counties. Obviously, there is nothing in the Constitution which mandates a State to impose a per capita standard for all save "rural" counties—the point is without substance. It is in-

---

* The Solicitor General expressly refrained from considering the rules for districting—as opposed to apportionment. We shall consider these rules, together with the apportionment provisions in this section—and demonstrate that they are perfectly constitutional.

teresting, nevertheless, because the central theory of the complaint in the instant case is that the apportionment invidiously discriminates rural counties against in favor of urban counties. Not only has the City turned its back on this theory, but appellants themselves apparently have abandoned it. As we have noted, they now reverse themselves to argue (Br., pp. 31-32) that comparisons based upon the urban or rural character of an area are irrelevant to the theory of their complaint. Thus, it appears that they rest exclusively upon the theory that the per capita standard is preemptive. Indeed, they must do so; as the City's brief points out (pp. 62-66), there is in fact no pattern of discrimination against rural areas.

Appellants (Br., p. 38) and the City (Br., pp. 58-60) also argue that the rules for districting the Assembly—as well as the apportionment rules—result in a "crazy quilt". In particular, they attack Art. III, § 5, par. 4 of the New York constitution, which in delegating to local authorities the power to draw Assembly lines in a multi-district county, provides that each Assembly district must be wholly contained within one Senate district. Where a county has two Senate districts and three Assembly districts, this provision results in one Senate district containing two Assembly districts while the other Senate district contains only one Assembly district. The constitutionality of this districting rule is not raised by the pleadings or by the record, and is therefore not properly before the Court. In any event, the point is insubstantial. The provision requiring Assembly districts to be contained within Senate districts is necessary for at least two reasons. It curbs gerrymandering of Assembly districts by local authorities, and thus assures that Assembly districts will be drawn along lines which will reflect appropriate groupings for representation rather than local partisan advantage. See United States Advisory Comm. on Intergovernmental Relations, Apportionment of State Legislature (Report A-15), pp. 54-55 (1962). It also coordi-

nates the constituencies of the Senator and Assemblyman. Thus, a Senator and an Assemblyman in his district are able to work together more effectively for common purposes. There is no justification at all for labelling this provision as arbitrary.

All the remaining sorties into the "crazy quilt" area simply reflect earlier arguments. For example, the City argues (a) (Br., pp. 57-58) that it is irrational to give a second Assemblyman to counties having over 1½ times the "ratio" because there are other counties, with almost as many inhabitants, which do not get a second Assemblyman. The short answer is that there must be a dividing line drawn at some point—one can always argue about where to draw the line, but one can hardly turn constitutionality on such an argument. And, if further explanation be needed, the provision giving a second Assemblyman to counties having over 1½ times the "ratio" allows a fairly populous county—with not quite two ratios—to gain greater representation than the very sparsely populated counties which have one Assemblyman but which may fall far short of achieving a full ratio. In the same scatter-shot attempt to find arbitrariness where there is none, the City argues (b) (Br., pp. 60-61) that it is "inconsistent" with the guarantee of one Assemblyman per county to combine Hamilton and Fulton counties in one Assembly district. The point is without merit. Hamilton is by far the least populous county in the State (R. 228) and Fulton happens to be a neighboring county (R. 317). There is certainly nothing strange about this reasonable exception to the general rule. In a similar vein, the City argues (Br., pp. 66-72) that the Senate apportionment is arbitrary because the provision for increasing the size of the Senate measures increases from the year 1894, the year the formula was passed, whereas "there is nothing sacred about the year 1894", and because the provision for a "full ratio" prevents some counties—having nearly a full ratio" —from gaining an additional Senator. Again it is clear

that a line needs to be drawn and that, wherever there is a provision for increasing the size of a body, there must be some point from which it is measured. A line or a base year need not be "sacred" to be acceptable. These arguments only show the weakness of any attempt to impute arbitrariness to the apportionment formula.

The New York constitution is, in fact, anything but arbitrary. It has established a systematic plan for apportioning legislative seats, giving a heavy emphasis to per capita representation while tempering this standard with other features to achieve adequate representation throughout the State. It avoids the error of equating mathematical niceties with true equality and as such is in the highest traditions of the federal Constitution.

POINT II

This case presents no occasion for the intervention of federal equity power.

In their complaint, appellants sought declaratory and injunctive relief, and further requested that the District Court retain jurisdiction of the action until the State legislature, "freed from the fetters imposed by the Constitutional provisions invalidated by this Court, provides for such apportionment of the State legislature as will insure to the urban voters of New York State the rights guaranteed them by the Constitution of the United States" (R. 12).

We believe that the relief sought by appellants is hopelessly vague, and points up the impossible task which would face a court of equity in enforcing their elusive theories of "equality." The obstacles confronting the Court are no less insuperable merely because of the fact that the immediate relief requested is a declaration of unconstitutionality, rather than a specific decree substituting another apportionment system for that adopted by the

people of the State of New York. First, an equity Court must apply some touchstone of constitutional theory when it comes to review any Act which would be passed to replace one declared unconstitutional. Second, in the event that the Legislature is unable to redistrict the state in conformity with a judicial decree, the Court must be prepared to grant specific relief. It is no part of equity's function to exercise jurisdiction "in the hope that such a declaration as is made today may have the direct effect of bringing on legislative action and relieving the courts of the problem of fashioning relief." *Baker* v. *Carr*, 369 U. S. 186, 251, 260 (1962) (CLARK, J., concurring). Unless a declaration of unconstitutionality here could be supported by an effective decree, the only proper course would be to dismiss the complaint.

It is to this problem—the impropriety of the relief sought—that we now turn. In this section of our brief, we will discuss two factors which, in our view, make it inequitable to grant relief here. First, as we have indicated, we believe there are no viable standards by which a Court could implement a decree. Second, we believe that in light of the grave consequences of any such decree, and the tenuous nature of any concept of "equality" embodied in it, a plaintiff must show compelling circumstances to justify the intervention of federal equity power to remake the structure of a state legislature. Even assuming that a workable decree could somehow be drafted, we will demonstrate that in New York State, whose legislative structure is responsive to the popular will and whose total governmental process is calculated to be responsive to the needs of a wide variety of popular interests, there are no compelling circumstances to justify such an intervention.

A. The lack of standards for a Court-imposed formula.

We already have touched on the insurmountable problems which would face a Court if it set out to enforce a

requirement that one or both houses of a state legislature must be apportioned in such a way that the dominant standard is per capita representation. These problems, of course, also prevent a court from formulating a decree which would embody appellants' elusive theories of "equality", and yet be sufficiently specific to permit ready compliance on the part of a state legislature.

First, there is no sure guide to how much weight must be placed on per capita representation. Even its staunchest advocates agree that reasonable deviations from that standard must be allowed to accommodate natural geographic boundaries, long standing community borders and similar dividing lines. Significantly, however, they fail to indicate how much deviation from a per capita standard is to be tolerated—and their own arguments show that the standard is a dubious and uncertain one at best. For example, the Solicitor General has referred to the projected 1960 apportionment of the New York Senate, in which a majority of the senators could be elected by constituencies containing 38 percent of the population, as one resulting "in gross inequalities in the representation of voters" and giving "control of the legislature to a relatively small minority of the People" (Br., pp. 35-36). Almost in the same breath, he refers to the 1906 apportionment of the Senate in which 41 percent of the voters lived in constituencies capable of electing a majority of the Senate, as one in which "the deviation in the Senate was comparatively small" (Br., p. 37). The problem of ascertaining the precise degree of per capita representation which is required becomes even more acute, of course, when it is conceded—as we believe it must be—that it is desirable to temper any standard of per capita representation with at least a modest weight for other factors which traditionally have been thought necessary to guarantee each voter an equal opportunity to influence the legislative process. It is beyond any possible standard of principled adjudication

to determine the extent to which these other factors may be included in an apportionment.

A similar problem of lack of standards haunts the suggestion, which we already have discussed, that only one house of a bicameral legislature may be apportioned on a basis which deviates substantially from a per-capita standard. As we have noted, it makes no sense to determine that what is a rational basis for apportionment in one chamber becomes irrational when applied to the other chamber. We wish to note here, however, that the same problems which make such a view untenable as an interpretation of the Fourteenth Amendment also render it useless as a standard for a workable equity decree. The representation of both houses of a state legislature is a closely intermeshed affair. It may be that it is possible to forego certain factors in apportioning one house if the inclusion of such factors in the apportionment of the other chamber sufficiently meets the needs of the entire legislative process. On the other hand, it may be that such factors would be better included in both houses to meet that need. For example, appellants themselves have correctly noted that it would be impossible in New York State to make an intelligent choice between the Senate and the Assembly as the chamber to be invalidated in a judicial decree requiring its reapportionment on a strict per capita basis (Br., pp. 49-50). They argue that this close relationship between the two makes it necessary to invalidate the apportionment of both legislative chambers even if this Court should find that one of them has an apportionment which is consistent with the Fourteenth Amendment. There is, of course, no merit to this suggestion. But it does present a larger question—whether the Court should strike down a legislative apportionment system which is delicately intermeshed with other parts of the governmental process. For surely it is true that the apportionment of one chamber of the Legislature not only is intimately tied to that of the other, but also to the executive branch of

the State and to its entire political structure. To tamper with this complex interrelationship, in the name of some abstruse concept of per capita representation, may indeed be to impose a cure which would "be worse than the disease." *Colegrove* v. *Green*, 328 U. S. 549, 564, 565 (1946) (RUTLEDGE, J., concurring).

The problem as it arises here is even more acute than it is in the ordinary task involving the exercise of a court's equitable discretion. No one can seriously contend that it is desirable for a court, in the first instance, to take on itself the burden of apportioning a state legislature. We urge, therefore, that it is particularly appropriate that any decision in this area lay down clear standards to enable a legislature to know the commands of the Constitution and guide itself accordingly. A decree which speaks in vague terms of adherence to a per capita standard—plus some allowable deviation to include other factors—does not satisfy this need. If such a decree results in forcing a state legislature to adhere to a strict per capita standard because it is unable to discern the vague "deviations" which it may be allowed to pursue, that decree would actually set back the cause of equal access to state government. It would prevent the legislature from giving due consideration to factors, other than the per capita standard, which may be required to insure such equal access. If, on the other hand, such a decree results in a legislative apportionment thereafter determined to give "undue" weight to factors other than per capita representation—and this new apportionment is therefore struck down—it has left the politics of the state in a hopeless tangle.

A decree which enforces adherence to the requirements of the state's own constitution or to "well developed and familiar" judicial standards under the Fourteenth Amendment, *cf. Baker* v. *Carr*, 369 U. S. 186, 226 (1962), would be open to no such objections. It alone can advance the cause of responsible state government. Any other decree can only retard it.

B. The lack of compelling circumstances to justify a Court-imposed formula.

Even if a court were to undertake—in the face of all the difficulties we have mentioned—to decree substantive standards for an apportionment in excess of those provided by the state's own constitution, it is quite obvious that it should do so only in the most "compelling circumstances." *Colegrove* v. *Green*, 328 U. S. 549, 564, 565, 566 n. 6, (1946) (RUTLEDGE, J., concurring). And assuming appellants in this case could somehow succeed in raising a colorable issue under the constitution, it is difficult to perceive how they could hope to show the kind of drastic situation which demands intervention by a federal equity court.

First, as we have pointed out, New York adheres substantially to a per capita standard in both houses of its legislature. Even under such a standard, it ranks twelfth in the nation in the degree of "representativeness" of its legislature. David and Eisenberg, Devaluation of the Urban and Suburban Vote 5 (1961). The voters in those counties with a population of more than 500,000 persons—with practical opportunities for asserting their political weight far in excess of those of other voters—are grouped together in constituencies having 86 per cent of the representation (on a per capita basis) accorded the average county in the State. David and Eisenberg, *id.* at 50. By contrast, Alabama and Maryland rank 39th and 44th, respectively, on the scale of representation according to a per capita standard, *id.* at 5, and their most "underrepresented" counties have only 25 per cent and 37 per cent, respectively, of the average representation in the State, *id.* at 19, 38. Even Virginia, which ranks second in per capita representativeness among all the states, *id.* at 5, gives its most populous counties only 73 per cent of the representation accorded the average county in the State. If a case of "compelling circumstances" can be made out in New York, there is no reason why it cannot be made out in virtually every other state of the union.

Second, New York's urban counties—which plaintiffs claim are dominated under the current apportionment by their less populated "rural" neighbors—have a clear majority of the state legislature. As we have pointed out, the ten most heavily populated counties alone—each of them at least 72 per cent urban, and most over 90 per cent urban (R. 61)—contain 73.5 per cent of the total citizen population and control 65.5 per cent of all the Senate and 62.0 per cent of all the Assembly (R. 227-29); on the basis of 1960 census figures, these counties will control 64.9 per cent and 61.3 per cent, respectively, of the two houses (R. 234, 237). In fact, the nine counties comprising the New York City standard metropolitan statistical area (R. 75) themselves have a majority of both legislative houses in both the current (R. 227) and projected (R. 237, 239-40) apportionments.

Third, the citizens of the most populous counties have had ample opportunity to change the present apportionment system. We have already alluded to the 1957 vote rejecting the constitutional convention, at which appellants admit (Br., p. 71) that the five "full ratio" counties—appellants' favorite characterization of the most populous counties in the State—would command a majority of the total delegation. It would surely be anomalous to conclude that federal equity power should intervene to protect those who have a clear opportunity to protect themselves.

Fourth, we reiterate again that the New York Legislature faithfully followed the dictates of its own constitution and has never attempted to discriminate against any class of voters on any basis whatsoever. The provisions of the New York constitution attempt to deal equally with all voters by recognizing that many factors other than per capita representation determine the strength of their voice in the legislative process.

Finally, we wish to add one further observation which we believe relevant to the question of whether a federal court should exercise its equitable powers to upset the

New York apportionment formula. The apportionment of a legislature is but one small facet of the governing process. As we have noted before, the stark fact which emerges from a glance at the population figures of this State is that New York City and its metropolitan area alone have the power to dominate the State. The Governor of the State traditionally must depend upon the residents of New York City for a substantial vote in order to hope to win an election. Munger and Straetz, New York Politics 55-63 (1960); Note, 72 Yale L. J. 968, 1022 (1963). Moreover, New York City, by sheer virtue of its size, wields an institutional power in the State that cannot be measured solely in terms of its representation in the Legislature or even in terms of its influence on state-wide elections. *Id.* at 1026. The same is true, although to a lesser degree, for Erie County—the only "full ratio" county which is not part of the New York City metropolitan area (R. 234). As we have already pointed out, New York City and its metropolitan counties control the Legislature. Indeed, New York State as a whole shows a relatively small variation from a standard of per capita representation. If one seeks for "compelling circumstances" to justify the imposition of a Court-decreed apportionment formula in this State, it is only natural that one look not only to the Legislature but to the governmental process in its entirety to see whether or not it denies responsiveness to any portion of the electorate. See *id.* at 1020. Under the circumstances of this case, we maintain that there can be no such showing.

POINT III

The District Court properly rejected appellants' offers of proof.

In this last section of our brief, we shall deal with appellants' contention that the District Court erroneously rejected their offers of proof. In their notice of appeal, appellants indicated that they would argue that the Dis-

trict Court wrongfully excluded evidence in three areas. First, appellants had offered to prove that the 1894 constitutional convention "intended to discriminate against urban residents because they were believed to be unworthy of an equal voice in the State government." Second, appellants offered to prove that "the malapportioned legislature unfairly discriminates against the underrepresented urban residents." Finally, appellants offered to prove that "a consensus of expert opinion supports the view that an apportionment pursuant to which both houses of the Legislature are grossly disportionate to population is unfair and discriminatory" (R. 327). We shall touch on all three of these areas briefly, although it appears from appellants' brief that they do not press the third point.

A. The offer to prove "intentional" discrimination.

Appellants first offered to show that each rule limiting the representation of New York City was "intentionally devised" to do that (R. 143). The Court rejected this offer on the ground that the motivation of the constitutional convention was irrelevant (R. 145).

We believe that the District Court quite properly rejected this offer of proof. Apparently, appellants intended to show that the delegates to the 1894 convention passed the constitutional provisions here challenged because they believed the urban voters were "unworthy of an equal voice in the State government" (R. 327). However, it is well established that such proof is utterly incompetent. It is alien to constitutional doctrine to inquire into the frame of mind of the convention or any of its members; the only question for the Courts is their power to pass these provisions, not the private beliefs which impelled them to do so. *United States* v. *DesMoines Ry.*, 143 U. S. 510, 544 (1892). This unsupported foray into legislative motive—attempting to taint the convention with a kind of legislative *mens rea*—imagines a "motive" for a large deliberative

body; and that imagination is completely without support in law or reality. See *McGowan* v. *Maryland*, 366 U. S. 420, 425-26, 468-69 (1961); *Kotch* v. *Board of Pilot Comm'rs*, 330 U. S. 552 (1947). In fact, appellants' references to the intemperate remarks of a few delegates to the convention hardly reflect that body's dominant mood. As one student of the proceedings has aptly pointed out, most of the delegates to the convention spent their time discussing far more weighty matters than the supposed "inferiority" of residents of any particular area of the State. See DeGrazia, Essay on Apportionment and Representative Government 40-49 (1963). Those of the delegates who did find the time to engage in this fruitless debate managed to say much more that was favorable about the urban populations than was unfavorable. *Id.* at 99.

Although appellants attempt to circumvent the well established bar to inquiry into legislative motive by relying on cases such as *Davis* v. *Schnell*, 81 F. Supp. 872 (S. D. Ala.), *aff'd* 336 U. S. 933 (1949), there is no basis whatever for the analogy. In *Davis*, it was relevant to consider the legislative setting of a literacy test requirement in order to determine whether it was used as a device to evade constitutional prohibitions against racial discrimination. See *Lassiter* v. *Northampton Co. Bd. of Elections*, 360 U. S. 45, 59 (1959). In the instant case, there is no question whether the New York apportionment formula is a "device" to "evade" a strict per capita standard. Obviously, the formula tempers such a standard with other factors, and the only question before the Court is the constitutional validity of the use of these factors. Appellants' offer was both incompetent and irrelevant, and it properly was excluded.

B. The offer to prove that the Legislature has "discriminated" against urban areas.

Appellants also offered to show that the Legislature, as a result of its claimed pro-rural bias, has discriminated against the urban areas in imposing taxes and distributing

revenues (R. 142, 147). This offer, too, was excluded (R. 148).

Here, too, the District Court ruled properly. One need not attack the history of state legislation in order to establish his standing to assert a claim of invidiously discriminatory legislative apportionment. *Baker* v. *Carr, supra,* held that citizens have a "plain, direct, and adequate interest in maintaining the effectiveness of their votes." 369 U. S. at 208. See *United States* v. *Classic,* 313 U. S. 299 (1941); *United States* v. *Saylor,* 322 U. S. 385 (1944).

Moreover, it adds nothing to appellants' case to launch a wholesale attack on the wisdom of past legislation. It has long been established that the Constitution does not regulate the allocations of taxes or revenues among a state's subdivisions. *General American Tank Car Corp.* v. *Day,* 270 U. S. 367, 372 (1926); *Carmichael* v. *Southern Coal Co.,* 301 U. S. 495, 521-23 (1937); *Everson* v. *Board of Education,* 330 U. S. 1, 5-8 (1947). Such an allocation is purely a political question to be thrashed out in the Legislature, not the Courts. *Davis* v. *Synhorst,* 217 F. Supp. 492 (S. D. Iowa 1963). Obviously, much may be said pro and con about the "wisdom" of New York's allocation of its taxes and revenues; in fact, some have concluded that the Legislature shows undue favoritism to the urban populations in this respect. See De Grazia, Essay on Apportionment and Representative Government, 118 n. 10 (1963). If a legislature passes an unconstitutional act, one need not claim malapportionment in order to strike down the act; on the other hand, if the legislature acts constitutionally, one cannot show malapportionment by asserting his grievances at the legislature's actions. Appellants' reliance on footnote 15 of the *Baker* decision is somewhat tenuous; if anything, the Court there indicated grave doubt as to whether the taxation arguments "could add anything however presented," and it left the question open only because it did not have to reach it. *Baker* v. *Carr, supra,* 369 U. S. at 195.

There is, of course, no merit to appellee Nickerson's suggestion (Br., pp. 18-19) that the allegations of the complaint regarding this alleged "discrimination" must be taken as true "since appellants were denied the right to prove the contention." That standard would apply only if the complaint had been dismissed for legal insufficiency without a hearing on the merits. *Cf. Clark* v. *Uebersee Finanz-Korp*, 332 U. S. 480, 482 (1947). A litigant who makes an offer of proof which has been excluded is a long way from proving the truth of the matter asserted; at most, he can gain the opportunity on a new trial to introduce such evidence.

C. The offer to prove that most "experts" agree with appellants' legal theories.

Appellants also offered in the District Court hearing to produce "expert" testimony as to whether the present apportionment was "fair and equitable" (R. 129). The Court rejected the offer (R. 129). Although appellants, in their notice of appeal, assign the rejection of this proffered evidence as error (R. 327), they do not press this point in their brief on appeal but merely mention it in passing (Br., p. 32 n. 19). We discuss the point here only to indicate that it is utterly without merit.

Obviously, the question of whether an apportionment formula is consistent with the Fourteenth Amendment is one for the Courts; they alone are experts on constitutional law. There is no more reason why an "expert" should be allowed to testify as to the validity of an apportionment formula than there is to have an "expert" testify as to the validity of any other state statute challenged as repugnant to the Federal Constitution.

It is interesting to note, however, that the "consensus of expert opinion" (R. 327) claimed by appellants to support their view simply does not exist. In fact, if one could divine any discernible trend from the many comments which followed this Court's decision in *Baker* v. *Carr*, *supra*, one would see that the "experts" have warned—

with good reason—that any mandate to follow a strict per capita standard in the apportionment of seats in the state legislature would result in a setback for the cause of viable, responsive state government. See *e.g.*, Bickel, *Reapportionment and Liberal Myths*, 6 Commentary 483 (1963); De Grazia, Essay on Apportionment and Representative Government (1963); Dixon, *Apportionment Standards and Judicial Power*, 38 Notre Dame Law. 367 (1963); Israel, *On Charting a Course Through the Mathematical Quagmire*, 61 Mich. L. Rev. 107 (1962); Lucas, *Legislative Apportionment and Representative Government*, 61 Mich. L. Rev. 711 (1963); McCloskey, *Foreword: The Reapportionment Case*, 76 Harv. L. Rev. 54 (1962); Neal, *Baker* v. *Carr; Politics In Search of Law*, 1962 Sup. Ct. Rev. 252 (1962); Sindler, *Baker* v. *Carr: How to 'Sear the Conscience' of Legislators*, 72 Yale L. J. 23 (1962).

CONCLUSION

For the foregoing reasons, the judgment of the United States District Court for the Southern District of New York dismissing the complaint should be affirmed.

Dated: New York, New York, October 18, 1963.

Respectfully submitted,

Louis J. Lefkowitz
Attorney General of the
State of New York
Attorney pro se and for
Defendant-Appellee
Secretary of State

Irving Galt
Assistant Solicitor General

Sheldon Raab
Assistant Attorney General

Barry Mahoney
Deputy Assistant Attorney General
of Counsel.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 30 1963
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963
No. 20

W. M. C. A. INC., R. PETER STRAUS, JOSEPH DEMAIO, EDWARD LIND, S. THOMAS DELANEY, EDWARD C. BROWN, JAMES J. MCCAFFERTY,

Plaintiffs-Appellants,

—against—

JOHN P. LOMENZO, Secretary of State of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, PAUL R. SCREVANE, President of the City Council of the City of New York, EUGENE H. NICKERSON, County Executive, Nassau County, LEONARD BERMAN, Chairman, Board of Supervisors, Westchester County, EVANS K. GRIFFING, Chairman, Board of Supervisors, Suffolk County, DENIS J. MAHON, JAMES POWER, JOHN R. CREWS, THOMAS MALLEE, Commissioners, Board of Elections, New York City,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEE EVANS K. GRIFFING

GEORGE W. PERCY, JR.,
Suffolk County Attorney
Attorney for Appellee Griffing
Suffolk County Center
Riverhead, New York

INDEX

	PAGE
Statement	1
Argument	2
Adopting brief of Appellees Secretary of State and Attorney General	2
Conclusion	4

Supreme Court of the United States

OCTOBER TERM, 1963

No. 20

W. M. C. A., Inc., R. Peter Straus, Joseph DeMaio, Edward Lind, S. Thomas Delaney, Edward C. Brown, James J. McCafferty,

Plaintiffs-Appellants,

—against—

John P. Lomenzo, Secretary of State of the State of New York, Louis J. Lefkowitz, Attorney General of the State of New York, Paul R. Screvane, President of the City Council of the City of New York, Eugene H. Nickerson, County Executive, Nassau County, Leonard Berman, Chairman, Board of Supervisors, Westchester County, Evans K. Griffing, Chairman, Board of Supervisors, Suffolk County, Denis J. Mahon, James Power, John R. Crews, Thomas Mallee, Commissioners, Board of Elections, New York City,

Defendants-Appellees.

BRIEF FOR APPELLEE EVANS K. GRIFFING

Statement

Evans K. Griffing, Chairman, Board of Supervisors, Suffolk County,* an appellee herein, respectfully asks

* When this action was begun William J. Leonard was chairman of the Board of Supervisors of Suffolk county. During proceedings below Arthur M. Cromarty became chairman. Evans K. Griffing is now such chairman; the title in this brief has been revised accordingly.

leave that he be permitted to adopt as his position and argument on this appeal the brief of appellees John P. Lomenzo (substituted for Caroline K. Simon), Secretary of State, and Louis J. Lefkowitz, Attorney General of the State of New York, dated October 18, 1963.

ARGUMENT

The brief of appellee Nickerson in support of the position of the appellants repeatedly associates Suffolk county with Nassau county in illustrations of the effect of the New York constitutional and statutory provisions governing apportionment of the state legislature.

Statistics eloquently support argument the two counties stand as closely together in these effects as in their geographical contiguity.

Nevertheless, appellee Griffing (Suffolk county) joins the state officials and Westchester county rather than appellants and those other appellees who have joined appellants.

Since the issues have been thoroughly briefed by both sides and the United States, it remains only to state briefly reasons why the chairman of the Board of Supervisors of Suffolk county should take a position different from that of Nassau county insofar as such reasons may be of an aid to the Court.

This appellee's position is dictated by reason of differences in the form of county government. Both Nassau and Suffolk operate under county charters,

but they are vastly different in many respects. There are important, essential differences in the constituency of the county legislative body and the voting strength and powers of the members thereof.

This appellee is also a defendant in another reapportionment suit (having to do with the method of election and voting powers of the county supervisors) and consistency of positions seems desirable.

Finally, this position will point up to razor-sharpness the issue whether the New York state legislature ca.. be responsive to the overall state-wide popular will under existing statutes which admittedly bring about results where some groups of citizens that can be characterized as of a particular city, or county, or urban area have less representation on a per capita basis than other groups of citizens.

This appellee asserts such discrimination as exists is merited by appropriate factors other than numbers, is tolerable under existing standards, and is not of an invidious nature such as would require a reversal.

Conclusion

For the reasons set forth in the brief of appellee Secretary of State and Attorney General the judgment of the District Court should be affirmed.

Dated: Riverhead, New York, October 24, 1963.

Respectfully submitted,

GEORGE W. PERCY, JR.,
Suffolk County Attorney
Attorney for Appellee Griffing
Suffolk County Center
Riverhead, New York

Office-Supreme Court, U.S.
FILED
NOV 18 1963
DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1963

WMCA, INC., Et Al., - - - - - - - - - - Appellants,
versus No. 20
CAROLINE K. SIMON, Secretary of State, Et Al., - Appellees.

THE MARYLAND COMMITTEE FOR FAIR REPRESENTATION, Et Al., - - - - - - - - - Appellants,
versus No. 29
J. MILLARD TAWES, Governor, Et Al., - - Appellees.

ON APPEAL FROM THE COURT OF APPEALS FOR MARYLAND.

B. A. REYNOLDS, Judge of Probate, Et Al., - Appellants,
versus No. 23
M. O. SIMS, Et Al., - - - - - - - - Appellees.

DAVID J. VANN and ROBERT S. VANCE, - Appellants,
versus No. 27
BETTYE FRINK, Secretary of State, Et Al., - Appellees.

JOHN W. McCONNELL, JR., Et Al., - - - Appellants,
versus No. 41
BETTYE FRINK, Secretary of State, Et Al., - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

LEVIN NOCK DAVIS, Secretary, State Board of Elections, Et Al., - - - - - - - - Appellants,
versus No. 69
HARRISON MANN, Et Al., - - - - - - - Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR KENNETH A. SCHMIED, PRESIDENT OF THE BOARD OF ALDERMEN OF THE CITY OF LOUISVILLE, KENTUCKY, AMICUS CURIAE IN Nos. 20, 29, 23, 27, 41 and 69.

(See Inside of Cover for List of Attorneys)

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

EUGENE H. ALVEY,
Director of Law,
City of Louisville,
Room 200, City Hall,
Louisville, Kentucky,

W. SCOTT MILLER, JR.,
408 Louisville Trust Building,
Louisville, Kentucky,

D. H. ROBINSON,
1504 Kentucky Home Life Building,
Louisville, Kentucky,

GEORGE J. LONG,
408 Louisville Trust Building,
Louisville, Kentucky,

Special Counsel for the City of Louisville.

INDEX

	PAGE
Grounds for the Court's Jurisdiction	2
Statement of Interest of Amicus Curiae	2
Argument	6
Conclusion	9
Appendix	11–14

AUTHORITIES CITED.

	PAGE
Schmied v. Combs, CA 4380, United States District Court for the Western District of Kentucky	2, 4
Baker v. Carr, 369 U. S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691	3

CONSTITUTIONAL PROVISIONS CITED.

	PAGE
Constitution of the United States Fourteenth Amendment	3, 6
Constitution of Comonwealth of Kentucky, Sec. 33	3, 4, 6

CONTENTS OF APPENDIX.

	PAGE
List and Population of House of Representative Districts	11
List and Population of Senatorial Districts	12
List and Population of Proposed House of Representative Districts	13
List and Population of Proposed Senatorial Districts	14

IN THE

Supreme Court of the United States

October Term, 1963

WMCA, Inc., Et Al., - - - - - - *Appellants*,
v. No. 20
Caroline K. Simon, Secretary of State, Et Al., - - - - - - - - - - *Appellees*.

The Maryland Committee for Fair Representation, Et Al., - - - - *Appellants*,
v. No. 29
J. Millard Tawes, Governor, Et Al., - - *Appellees*.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND.

B. A. Reynolds, Judge of Probate, Et Al., *Appellants*,
v. No. 23
M. O. Sims, Et Al., - - - - - - - - *Appellees*.

David J. Vann and Robert S. Vance, - *Appellants*,
v. No. 27
Bettye Frink, Secretary of State, Et Al., - *Appellees*.

John W. McConnell, Jr., Et Al., - - *Appellants*,
v. No. 41
Bettye Frink, Secretary of State, Et Al., - *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

Levin Nock Davis, Secretary, State Board of Elections, Et Al., - - - - *Appellants*,
v. No. 69
Harrison Mann, Et Al., - - - - - - *Appellees*.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

BRIEF FOR KENNETH A. SCHMIED, PRESIDENT OF THE BOARD OF ALDERMEN OF THE CITY OF LOUISVILLE, KENTUCKY, AMICUS CURIAE IN Nos. 20, 29, 23, 27, 41 and 69.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes Kenneth A. Schmied, President of the Board of Aldermen of the City of Louisville, Kentucky, and respectfully files herewith a brief as Amicus Curiae in the above styled action.

JURISDICTION

The City of Louisville, Kentucky, is a duly constituted political sub-division of the Commonwealth of Kentucky, and Kenneth A. Schmied is a duly elected member of the Board of Aldermen of said City, and was elected President of said Board of Aldermen and he files this Brief Amicus Curiae pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States.

STATEMENT OF INTEREST OF AMICUS CURIAE

The City of Louisville, acting by and through the President of the Board of Aldermen, Kenneth A. Schmied, filed an Action in the United States District Court for the Western District of Kentucky in June of 1962, Action No. CA 4380. This Action came on to be heard on December 13, 1962, and the hearing was treated as a Pre-trial Conference, at which time the Defendant, Bert T. Combs, Governor of the Commonwealth of Kentucky, announced to the Court that he recognized the need for reapportionment of the General Assembly of the Commonwealth of Kentucky and

acknowledged all the facts alleged in the Complaint and Amended Complaint of the Plaintiff.

On the 28th day of January, 1963, the General Assembly of the Commonwealth of Kentucky was called into extraordinary session for the purpose of reapportioning said General Assembly. The General Assembly did pass a reapportionment Bill which was signed into law by the Governor, however, it is the belief of Kenneth A. Schmied that said General Assembly did not apportion itself fairly as required by the Constitution of the Commonwealth of Kentucky and by the Fourteenth Amendment of the Constitution of the United States and that there exists invidious discrimination against the County of Jefferson and the City of Louisville.

This Honorable Court has now six cases pending before it on appeal from final judgments from three-judge federal district courts sitting in several states. All of these cases are outgrowths of the now famous case of *Baker* v. *Carr*, 369 U. S. 186, 7 L. Ed. 8d 663, 82 S. Ct. 691. This Brief is filed before this Court to point out the necessity for fixing certain yardsticks and guide lines for the various state legislatures concerning the manner in which reapportionment must be carried out. To leave the manner to the various legislatures would result in a "crazy quilt" pattern having no uniformity at all and as one writer has described reapportionment without standards or yardsticks is like "do it yourself surgery which is painful and apt to be done badly." It is most imperative that

the legislatures of the several states have guide lines by which to reapportion themselves because without guide lines and if the job is done badly or inadequately usually you must wait at least two years to correct this matter which necessitates four years before the overall matter can be corrected and the area discriminated against can have its proper representation.. In Kentucky the job done by the General Assembly is not bad when compared to many of the states. The extreme variances between the largest and the smaller districts have disappeared but there still exist a large degree of disparity between the rural and urban votes which is far more than ere should be if the districts were made "as nearly equal as possible" which is a requirement of the Kentucky Constitution, Section 33. There still exists variances of better than two to one. Counsel in the case of *Schmied* v. *Combs* requested that the District Court lay down guide lines for the General Assembly. This, the Court declined to do, stating "* * * the legislature does not need to be guided, they need to know that if they don't do it properly, fairly in making this reapportionment that it will not be effective * * *." The General Assembly did not give full consideration and representation to the County of Jefferson in which the City of Louisville is situated and the effect of this delay is causing further frustration on the part of a large portion of the population of the Commonwealth. To illustrate the point, legislators are elected in 1963. They take office in January of 1964. The earliest time by which we can now reapportion and get the full

benefit of this representation would be at the next regular session which is in 1966 or just four years prior to the next census. This Amicus Curiae respectfully asks this Court to require that the various district courts lay down yardsticks by which reapportionment shall be accomplished and to require these legislatures to use the latest possible figures and best information available as to population. An illustration of the reason requesting this is that the 1960 Census showed the population of Kentucky at 3,038,156 and the population of Jefferson County at 610,947 or 20% of the population of the Commonwealth. A bill was introduced at the Special Session of the General Assembly calling for 20 seats in the House and 8 seats in the Senate, the House being made up of 100 seats and the Senate 38. At the time the General Assembly convened the figures computed by the University of Kentucky showed that Jefferson County had increased in population of over 640,000, thus, entitling it to 21 and possibly 22 seats and that other counties were continuing to lose population almost daily. However, Jefferson County was awarded only 17 seats in the House and only 7 seats in the Senate.

ARGUMENT.

The failure of the General Assembly of the Commonwealth of Kentucky to reapportion itself properly to as "nearly equal as possible" legislative and senatorial districts pursuant to the requirements of the Kentucky Constitution and the Fourteenth Amendment of the United States Constitution has continued to deny the urban citizens of the Commonwealth adequate representation. The Kentucky Constitution requires that the State shall be reapportioned every 10 years. Kentucky was reapportioned in 1942 and until 1963 there had been no other apportionment. Since 1942 there have been tremendous and highly significant shifts of population within the State; and these shifts are continuing to this very minute. By shifting population, this means that many counties in Kentucky are rapidly losing population while others are growing rapidly and we recognize this is not only true of Kentucky, but many other states. This situation is evidenced beyond any doubt by looking at the graph showing the comparative size of the districts which is in the Appendix (Exhibits 2 and 3); which shows that the House seats alloted to Jefferson County are with one exception the largest district in the State. This is a great deal of under-representation not only in one, but in each and every district. The one exception to this is the County of Hopkins, which is District Number 10, which has a population of 38,600; wherein the ideal district would be 30,382, the rea-

son being that Hopkins County is not large enough for two districts and just a little too large for one. The Kentucky Constitution has a provision in it against the splitting of counties. Legislation was introduced in the 1963 Special Session of the General Assembly which was much more nearly equal than this (Appendix, Exhibits 4 and 5). It is believed that equality of representation is exactly what it says and there can be no substitute, no half-way equality of representation and no deviation from the principle recognizing of course, that we cannot achieve mathematical exactness, but that we should strive to do the next best thing to that in order that each person's vote may be weighed the same. We believe it would be of little use to go into the arguments in favor of reapportionment since they have been clearly outlined many times by able counsel and the Court is cognizant of these arguments and cognizant of the results when equal representation is not allowed. However, to the legislator, to the chief executive of the state, to the various urban areas and citizens therein, there must be some guide lines to allow the legislature to know whether it is functioning properly and apportioning properly and establish once and for all and clearly, a legislature's duty and role and what cities and individuals are entitled to in the way of representation if for no other reason than to keep down a multiplicity of suits. For the mere mention of reapportionment in a legislative body creates an explosive situation so that the urban area which is seeking to force reapportionment is very possibly not apt to fare well at the hands of the General Assembly of

that particular state in terms of needed legislation, appropriations and all the other considerations that come before that body. This in turn follows through to deny the urban areas many things that they need and need desperately in these days of the population explosion and often they cannot wait until the next session of the General Assembly, particularly, where most legislative bodies of states meet only every other year. Thus, one of man's most sacred rights, the right of equal representation becomes nothing more than a saying or a half truth and human nature being what it is, the attitude of the legislatures concerning reapportionment will be "let's see how little we can change and get by with" by further slowing down the needed reapportionment which will continue from time to time. Our system of government, which provides that the government acquires its rights from the consent of the governed, cannot function effectively if the people cannot give their consent freely when they are denied the means of true equality to elect those who represent their wishes.

The General Assemblies of the Legislatures of the Various States Should Use the Best Available Evidence as to Population of the Various Districts and Counties Within the State.

The 1960 Census figures would not seem to be the best evidence to use in reapportionment which would be carried out in 1964, 1966 or 1968 as these would clearly not show the loss and gains of population

within the districts and counties of the state, therefore, the people do not have the means of equality in the election of their representatives in their state government.

CONCLUSION.

The situation in Kentucky has been presented to this Honorable Court because of its analogy to the situations presented in the several cases now before this Court. The facts have been set out in order to illustrate the situation is not restricted to the several states whose cases are before this Honorable Court and to respectfully request that any opinion of this Court should be far reaching enough to remedy the situation in all of the several states by establishing yardsticks and guide lines for the various legislatures.

Respectfully submitted,

EUGENE H. ALVEY,
Director of Law,
City of Louisville,
City Hall, Room 200,
Louisville, Kentucky,

W. SCOTT MILLER, JR.,
408 Louisville Trust Building,
Louisville, Kentucky,

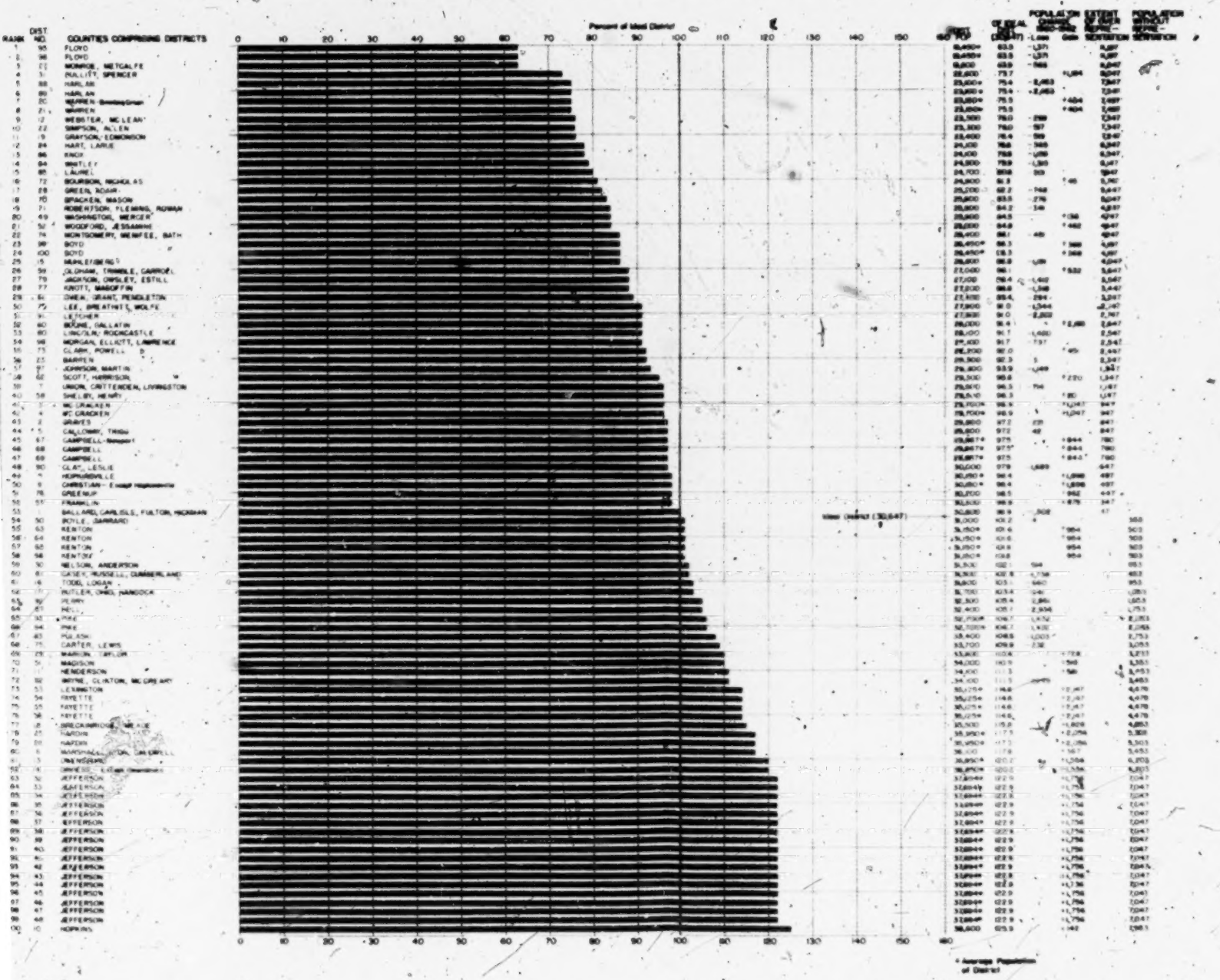
D. H. ROBINSON,
1504 Kentucky Home Life Building,
Louisville, Kentucky,

GEORGE J. LONG,
408 Louisville Trust Building,
Louisville, Kentucky,

Special Counsel for the City of Louisville.

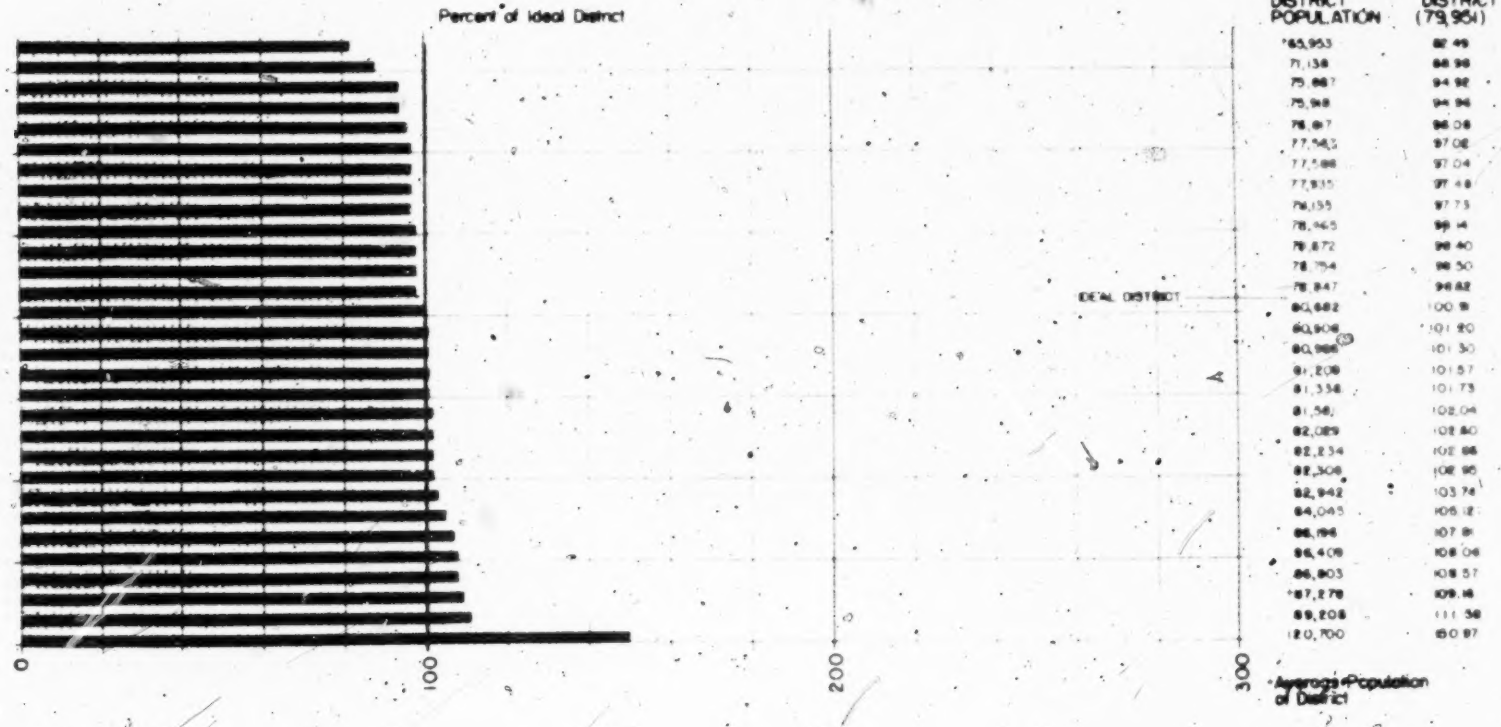
HOUSE OF REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY OF KENTUCKY UNDER HOUSE BILL NO. 3 AS AMENDED 1 ST. EXTRAORDINARY SESSION OF 1963 RANKED ACCORDING TO 1962 POPULATION (UNIVERSITY OF KENTUCKY ESTIMATED FIGURES)

COMPARING THE DISTRICTS AND DEVIATION FROM IDEAL REPRESENTATIVE DISTRICTS AND GAIN OR LOSS FROM 1960 TO 1962



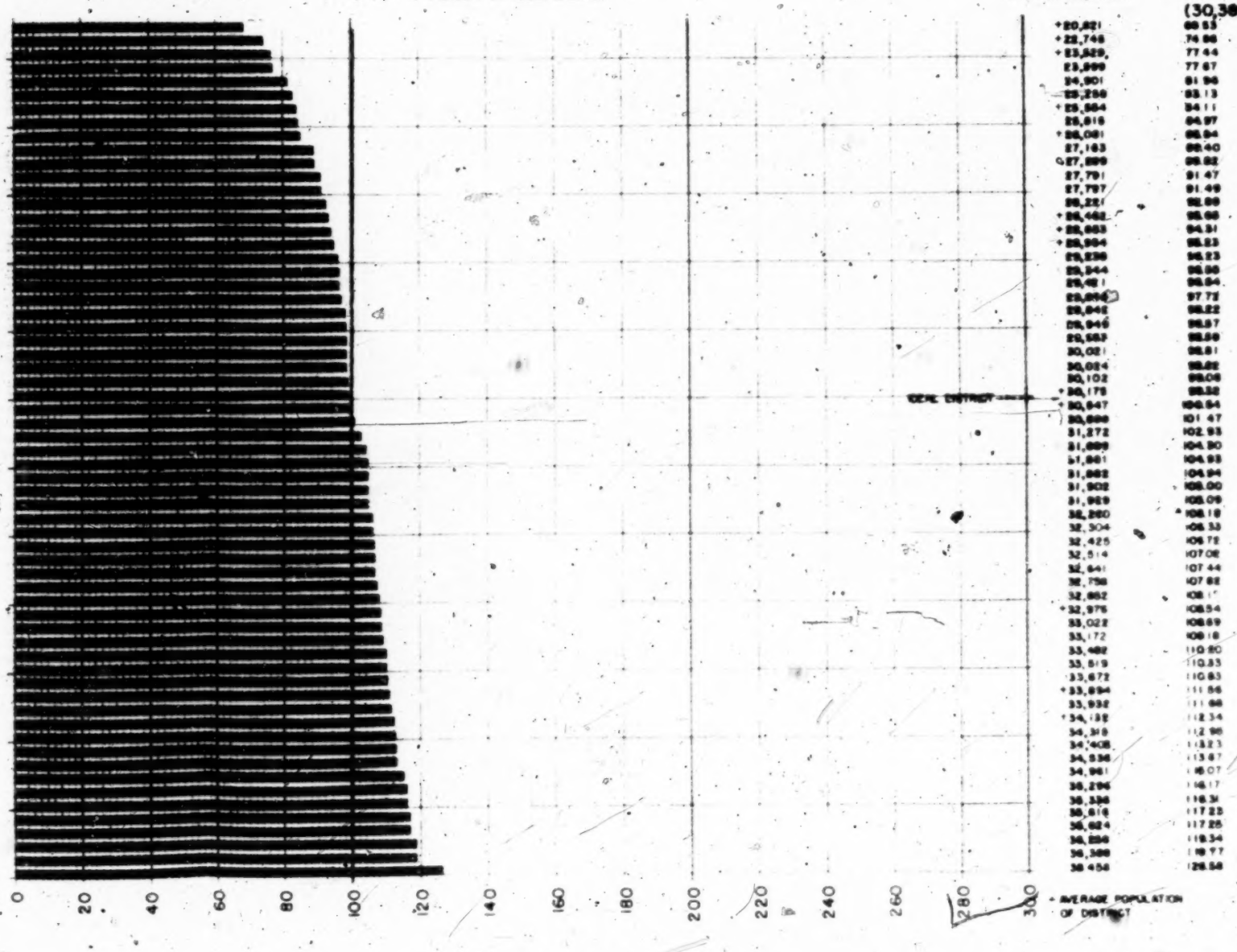
PROPOSED SENATORIAL DISTRICTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY BASED UPON THE 1960 CENSUS ENUMERATION

RANK	DISTRICT NO	COUNTIES COMPRISING DISTRICTS	TOTAL DISTRICT POPULATION	PERCENT OF IDEAL DISTRICT (79,954)
1	29-30	FAYETTE	*85,953	82.49
2	19	BOYLE, GARRARD, MERCER, JESSAMINE, WOODFORD	71,138	88.98
3	4	CRITTENDEN, WEBSTER, HOPKINS, UNION	75,887	94.92
4	6	DAVIESS, HANCOCK	75,948	94.96
5	7	BUTLER, OHIO, GRAYSON, BRECKINRIDGE, MEADE	78,817	98.08
6	13	CASEY, PULASKI, ROCKCASTLE, LINCOLN	77,543	97.02
7	15	ANDERSON, FRANKLIN, SCOTT, SHELBY, SPENCER	77,588	97.04
8	8	LOGAN, WARREN, SIMPSON	77,935	97.48
9	10	HARDIN, LARUE	78,155	97.75
10	38	MARTIN, PIKE	78,965	98.14
11	27	PENDLETON, BRACKEN, MASON, HARRISON, NICHOLAS, ROBERTSON, FLEMING, BATH	79,872	98.40
12	34	LESLIE, PERRY, KNOTT, BREATHITT	78,754	98.50
13	5	CHRISTIAN, TRIGG, CALDWELL	78,847	98.62
14	2	GRAVES, CALLOWAY, MARSHALL, LIVINGSTON, LYON	80,682	100.9
15	12	GREEN, ADAIR, RUSSELL, CUMBERLAND, CLINTON, WAYNE, MC CREARY	80,908	101.20
16	24	GRANT, BOONE, CARROLL, GALLATIN, HENRY, OLDHAM, OWEN, TRIMBLE	80,988	101.30
17	33	HARLAN, LETCHER	81,209	101.57
18	35	FLOYD, WAROFFIN, MORGAN, WOLFE, MENIFEE, POWELL	81,358	101.73
19	31	LAUREL, CLAY, JACKSON, OWSLEY, LEE, ESTILL	81,581	102.04
20	5	HENDERSON, MC LEAN, MUHLENBERG, TODD	82,089	102.60
21	11	BULLITT, NELSON, WASHINGTON, MARION, TAYLOR	82,234	102.88
22	36	LEWIS, BREATHITT, CARTER, ELLIOTT, ROWAN	82,308	102.95
23	9	ALLEN, BARREN, MONROE, METCALF, HART, EDMONSON	82,942	103.74
24	37	BOYD, LAWRENCE, JOHNSON	84,045	105.12
25	28	MADISON, CLARK, BOURBON, MONTGOMERY	86,196	107.81
26	32	WHITLEY, BELL, KNOX	86,408	108.06
27	26	CAMPBELL	86,803	108.57
28	16-17	JEFFERSON	*87,278	109.16
29	1	FULTON, HICKMAN, CARLISLE, BALLARD, MC CRACKEN	89,208	111.58
30	25	KENTON	120,700	150.97



PROPOSED REPRESENTATIVE DISTRICTS OF THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF KENTUCKY BASED UPON THE 1960 CENSUS ENUMERATION

RANK	DISTRICT NO	COUNTIES COMPRISING DISTRICTS	TOTAL DISTRICT POPULATION	PERCENT OF IDEAL DISTRICT (30,382)
1	100-91	FLOYD	+20,821	68.53
2	90-81	WARREN	+22,748	74.86
3	13-16	DAVIESS	+23,529,	77.44
4	11	WEBSTER, MC LEAN	23,599	77.67
5	81	LAUREL	24,901	81.96
6	83	KNOX	25,256	83.13
7	88-96	HARLAN	+25,554	84.11
8	82	WHITLEY	25,815	84.97
9	98-97	BOYD	+26,081	85.84
10	83	WAYNE, MC CREARY	27,183	89.40
11	98	SCOTT, WOODFORD	27,899	91.82
12	17	MUHLENBERG	27,791	91.47
13	92	CUMBERLAND, CLINTON, RUSSELL	27,797	91.49
14	97	MERCER, JESSAMINE	28,221	92.89
15	7-8	CHRISTIAN	+28,482	93.75
16	3-4	MC CRACKEN	+28,683	94.31
17	87-89	CAMPBELL	+28,954	95.23
18	96	GREENUP	29,238	96.23
19	100	MASON, FLEMING	29,344	96.58
20	89	FRANKLIN	29,481	97.04
21	9	MARSHALL, LIVINGSTON, LYON	29,696	97.72
22	8	CALLOWAY, TRIGG	29,848	98.22
23	94	JOHNSON, MARTIN	29,945	98.57
24	23	GRAYSON, HART	29,953	98.59
25	2	GRAVES	30,021	98.81
26	47	BALLITT, SPENCER, ANDERSON	30,054	98.92
27	87	LETCHER	30,102	99.08
28	89-86	KENTON	+30,178	99.33
29	27-46	JEFFERSON	+30,847	100.54
30	85	LINCOLN, CASEY	30,899	101.47
31	95	ROWAN, ELLIOTT, LAWRENCE	31,272	102.93
32	80	LESLIE, CLAY	31,699	104.30
33	60	SHELBY, OLDHAM	31,861	104.93
34	71	BOURBON, HARRISON	31,882	104.94
35	1	FULTON, HICKMAN, BALLARD, CARLISLE	31,902	105.00
36	79	ESTILL, LEE, OWSLEY, POWELL	31,989	105.09
37	10	TODD, LOGAN	32,260	106.18
38	81	TRIMBLE, HENRY, CARROLL, OWEN	32,304	106.33
39	49	HARRISON, BOYLE	32,425	106.73
40	48	TAYLOR, LARUE	32,514	107.08
41	18	HANCOCK, OHIO, BUTLER	32,641	107.44
42	86	GARRARD, ROCKCASTLE, JACKSON	32,758	107.82
43	89	KNOTT, BREATHITT	32,862	108.17
44	75-76	FAYETTE	+32,975	108.54
45	77	WOLFE, BREATHITT, MORGAN, MAGOFFIN	33,022	108.69
46	50	MARION, TAYLOR	33,172	109.18
47	78	MADISON	33,482	110.20
48	12	HENDERSON	33,519	110.33
49	24	BRECKINRIDGE, MEADE	33,672	110.83
50	28-26	NELSON	+33,894	111.56
51	99	CARTER, LEWIS	33,932	111.68
52	92-93	PIKE	+34,132	112.34
53	91	GREEN, ADAIR, METCALFE	34,318	112.96
54	84	PULASKI	34,408	113.23
55	76	CLARK, MONTGOMERY	34,536	113.67
56	88	PERRY	34,981	115.07
57	82	BOONE, GRANT, GALLATIN	35,296	116.17
58	84	BELL	35,336	116.31
59	19	SIMPSON, ALLEN, MONROE	35,616	117.23
60	70	PENDLETON, BRACKEN, ROBERTSON, NICHOLAS, BATH	35,624	117.25
61	9	UNION, CRITTENDEN, CALDWELL	35,836	118.34
62	22	BARREN, EDMONSON	35,388	116.97
63	10	HOPKINS	38,454	126.58



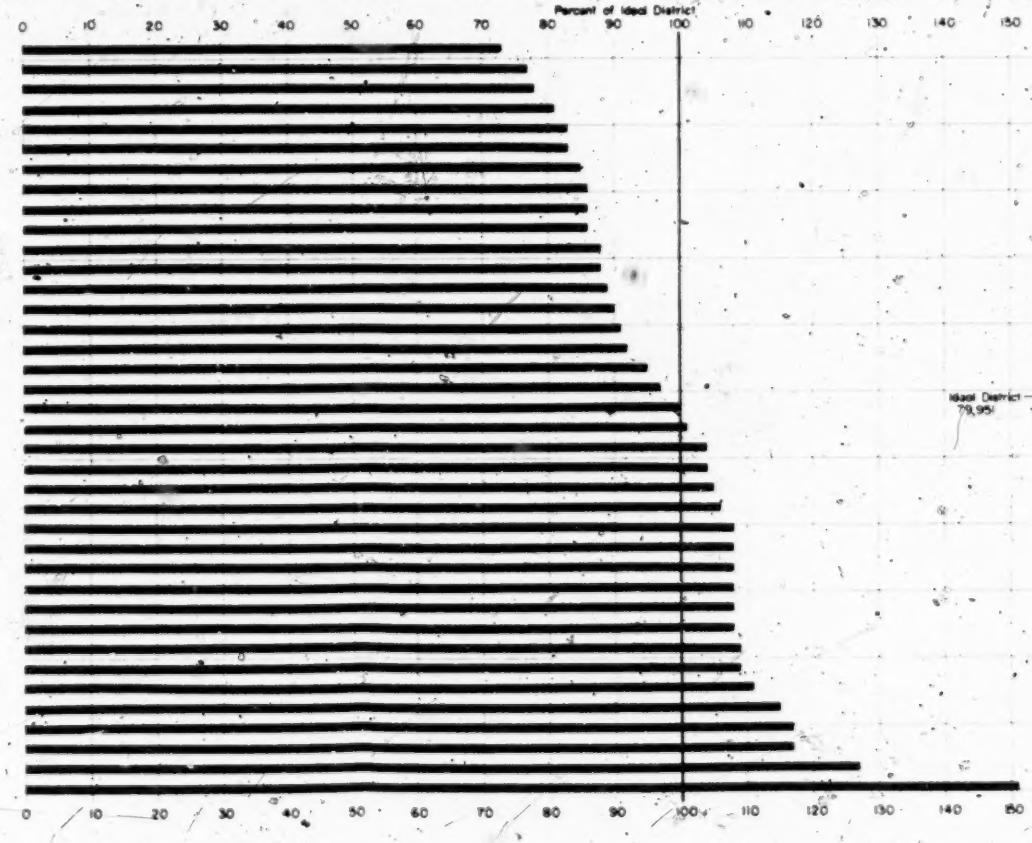
SENATORIAL DISTRICTS OF THE GENERAL ASSEMBLY OF KENTUCKY

UNDER HOUSE BILL NO. 4 AS AMENDED — 1 ST. EXTRAORDINARY SESSION OF 1963

RANKED ACCORDING TO 1960 POPULATION (FEDERAL CENSUS ENUMERATION) FIGURES

COMPARING THE DISTRICTS AND DEVIATION FROM IDEAL SENATORIAL DISTRICT AND GAIN OR LOSS FROM 1950 TO 1960

RANK	DIST. NO.	COUNTIES COMPRISING DISTRICTS	DIST POP	PERCENT OF IDEAL DIST (79,951)	POPULATION CHANGE 1950 – 1960 Loss	Gain	EXTENT OF OVER REPRE-SENTATION	POPULATION WITHOUT REPRE-SENTATION
1	21	LESLIE, HARLAN	62,048	77.6	-25,240		17,903	
2	13	FAYETTE-LEXINGTON	62,810	78.6		+15,959	17,141	
3	23	LETCHER, PERRY	65,083	81.4	-2,025		14,888	
4	27	MASON, FLEMING, BATH, MORGAN, MENIFEE, ROWAN	65,598	83.3	-5,380		14,353	
5	6	LYON, CALDWELL, HOPKINS, MC LEAN	66,810	83.6	-2,078		13,141	
6	30	PENDLETON, BRACKEN, ROBERTSON, HARRISON, NICHOLAS, BOURBON, GRANT	67,881	84.9	-1,863		12,070	
7	5	PIKE	68,264	85.4	-12,890		11,687	
8	12	FAYETTE	69,096	86.4		+15,987*	10,855	
9	29	MARTIN, FLOYD, KNOTT	69,205	86.6	-16,292		10,746	
10	18	LEWIS, CARTER, GREENUP, ELLIOTT	69,500	86.9		+1,449	10,451	
11	1	CARLISLE, HICKMAN, FULTON, GRAVES, MARSHALL	70,368	88.0	-2,035		9,583	
12	4	HENDERSON, UNION, WEBSTER, CRITTENDEN	70,948	88.7	-1,033		9,003	
13	26	OLDHAM, HENRY, OWEN, TRIMBLE, CARROLL, GALLATIN, BOONE	71,452	89.4		+8,683*	8,452	
14	2	BALLARD, MC CRACKEN, LIVINGSTON	72,826	90.8		+7,760	7,329	
15	9	LARUE, HART, BARREN, METCALFE, ALLEN	73,404	91.8	-3,877		6,547	
16	19	ROCKCASTLE, JACKSON, OWSLEY, LAUREL, CLAY	74,029	92.6	-5,234		5,922	
17	8	DAVIESS, ANCOCA	75,918	95.0		+12,888	4,033	
18	20	SHELBY, SPENCER, ANDERSON, FRANKLIN, SCOTT	77,588	97.0		+3,481	2,363	
		Ideal District 79,951						
19	16	MONROE, CUMBERLAND, CLINTON, RUSSELL, ADAIR, GREEN, TAYLOR	80,244	100.4	-12,496			293
20	5	MUHLENBERG, TODD, LOGAN, SIMPSON, BUTLER	81,185	101.5	-9,508			1,234
21	38	JEFFERSON	83,125	104.0		+17,309*		3,174
22	22	MADISON, GARRARD, JESSAMINE, MERCER, WOODFORD	83,363	104.3		+2,842		3,412
23	25	BOYD, LAWRENCE, JOHNSON	84,045	105.1	-4,468			4,094
24	37	JEFFERSON	85,249	106.6		+7,826*		5,298*
25	17	WHITLEY, KNOX, BELL	86,409	108.1	-23,342			6,458
26	10	MEADE, HARDIN	86,727	108.5		+26,993		6,776
27	31	CALLOWAY, TRIGG, CHRISTIAN	86,746	108.5		+14,587		6,795
28	11	CAMPBELL	86,803	108.6		+10,607		6,852
29	36	JEFFERSON	86,931	108.7		+17,976*		6,980
30	35	JEFFERSON	87,075	108.9		+18,005*		7,124
31	14	BULLITT, NELSON, WASHINGTON, MARION, BOYLE	87,206	109.1		+5,815		7,255
32	34	JEFFERSON	87,634	109.6		+9,121*		7,683
33	7	JEFFERSON	88,826	111.1		+18,337		8,875
34	33	JEFFERSON	92,117	115.2		+19,048*		12,166
35	15	MC CREARY, PULASKI, LINCOLN, CASEY, TAYLOR	93,961	117.5	-11,648			14,010
36	28	MONTGOMERY, POWELL, ESTILL, LEE, BREATHITT, WOLFE, MAGOFFIN, CLARK	94,274	117.9	-9,293			14,323
37	32	OHIO, GRAYSON, EDMONSON, WARREN, BRECKINRIDGE	101,869	127.4		+14,504		21,918
38	24	KENTON	120,700	151.0		+18,446		40,749



*Estimated Population